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THE CONSTITUTION OF ENGLAND,

OR AN ACCOUNT OF THE ENGLISH GOVERNMENT;

In which it is compared with the REPUBLICAN Form of GOVERNMENT, and occasionally with the other MONARCHIES in EUROPE.

By J. L. DE LOLME, Advocate,
Citizen of Geneva.

THE THIRD EDITION.

Ponderibus librata suis.———

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ADVERTISEMENT.

THE Book on the Engliſh Conſtitution, of which a new Edition is here offered to the Public, was firſt written in French, and publiſhed in Holland. Several perſons have aſked me the queſtion, how I came to think of treating ſuch a ſubject. One of the firſt things in this Country, that engages the attention of a Stranger, who is in the habit of obſerving the objects before him, is the peculiarity of its Government: I had moreover been lately a witneſs of the broils which had for ſome time prevailed in the Republic in which I was born, and of the revolution by which they were terminated. Scenes of that kind, in a State which, though ſmall, is independent, and contains within itſelf the principles of its motions, had naturally given me ſome competent inſight into the firſt real principles of Governments: owing to this circumſtance, and perhaps alſo to ſome moderate ſhare of natural abi-

lities, I was enabled to perform the taſk I had undertaken, with tolerable ſucceſs. I was twenty-ſeven years old when I firſt came to this Country; after having been in it only a year, I began to write my work, which I publiſhed about nine months afterwards: and I have ſince been ſurpriſed to find that I had committed ſo few errors of a certain kind: I certainly was fortunate in avoiding to enter deeply into thoſe articles with which I was not ſufficiently acquainted.

The Book met with rather a favourable reception on the Continent; three ſucceſſive Editions having been made of it. And it alſo met here with approbation, even from Men of oppoſite parties; which, in this Country, was no ſmall luck for a Book on ſyſtematical politics. Allowing that there was ſome connection and clearneſs, as well as novelty, in the arguments, I think the work was of ſome peculiar utility, if the epoch at which it was publiſhed, is conſidered; which was, though without any deſign from me, at the time when the diſputes with the Colonies were beginning to take a ſerious turn, both here and in America. A work which contained a ſpecious, if not thoroughly true, confutation of thoſe political notions by the help of which a diſunion of the Empire was endeavoured to be promoted (which confutation was moreover noticed by Men in the higheſt places) ſhould have procured to the Author ſome ſort of real encou-

ragement; at leaſt the publication of it ſhould not have drawn him into any inconvenient ſituation. When my enlarged Engliſh Edition was ready for the preſs, had I acquainted Miniſters that I was preparing to boil my tea-kettle with it, for want of being able conveniently to afford the expence of printing it, I do not pretend to ſay what their anſwer would have been; but I am firmly of opinion, that, had the like arguments in favour of the exiſting Government of this Country, againſt republican principles, been ſhewn to Charles the Firſt, or his Miniſters, at a certain period of his reign, they would have very willingly defrayed the expences of the publication.——In defect of encouragement from Great Men (and even from Bookſellers) I had recourſe to a ſubſcription; and my having expected any ſucceſs from ſuch a plan, ſhews that my knowledge of this Country was at that time but very incomplete (*a*).

(*a*) In regard to two Subſcribers in particular, I was, I confeſs, ſadly diſappointed.——Though all the Bookſellers in London had at firſt refuſed to have any thing to do with my Engliſh Edition (notwithſtanding the French Work was extremely well known), yet, ſoon after I had thought of the expedient of a Subſcription, I found that two of them, who are both living, had begun a tranſlation, on the recommendation, as they told me, of a Noble Lord, whom they named, who had, till a few years before, filled one of the higheſt offices under the Crown. I paid them ten pounds, in order to engage them to drop their under-

After mentioning the advantages with which my Work has not been favoured, it is however juſt I ſhould give an account of thoſe by which it has been attended. In the firſt place, as is above

taking, about which I underſtood they already had been at ſome expence. Had the Noble Lord in queſtion favoured me with his ſubſcription. I would have celebrated the generoſity and munificence of my Patron; but as he did not think proper ſo to do, I ſhall only obſerve that his recommending my Work to a Bookſeller, coſt me ten pounds.

At the time the above ſubſcription for my Engliſh Edition was advertiſing, a copy of the French Work was aſked of me for a Noble Earl, then inveſted with a high office in the State; none being at that time to be found at any Bookſeller's in London. I gave the only copy I had (the conſequence was, that I was obliged to borrow one, to make my Engliſh Edition from); and I added, that I hoped his Lordſhip would honour me with his ſubſcription. However, my hopes were here again confounded. As a Gentleman, who continues to fill an important office under the Crown, accidentally informed me about a year afterwards, that the Noble Lord here alluded to, had lent him my French work, I had no doubt left that the copy I had delivered, had reached his Lordſhip's hand: I therefore preſumed to remind him by a letter, that the Book in queſtion had never been paid for; at the ſame time apologizing for ſuch liberty from the circumſtances in which my late Engliſh Edition had been publiſhed, which did not allow me to loſe one copy. I muſt do his Lordſhip (who is moreover a Knight of the Garter) the juſtice to acknowledge, that, no later than a week afterwards, he ſent two half-crowns for me to a Bookſeller's in Fleet-ſtreet. A Lady brought them in a coach, who took a receipt. As ſhe

ſaid, Men of high rank have condeſcended to give their approbation to it; and I take this opportunity of returning them my moſt humble acknowledgments. In the ſecond place, after the difficulties by which the publication of the Book had been attended and *followed*, were overcome, I began to ſhare with Bookſellers in the profits ariſing from the ſale of it. Theſe profits I indeed thought to be but ſcanty and ſlow: but then I conſidered this was no more than the common complaint made by every Trader in regard to his gain, as well as by every Great Man in regard to his emoluments and his penſions. After a courſe of ſome years, the net balance formed by the profits in queſtion, amounted to a certain ſum, proportioned to the bigneſs of the performance. And, in fine, I muſt add to the account of the many favours I have received, that I was allowed to carry on the above buſineſs of ſelling my book, without any objection being formed

was, by the Bookſeller's account, a fine Lady, though not a Peereſs, it gave me much concern that I was not preſent to deliver the receipt to her myſelf.

At the ſame time I mention the Noble Earl's great punctuality, I think I may be allowed to ſay a word of my own merits. I waited, before I preſumed to trouble his Lordſhip, till I was informed that a penſion of four thouſand pounds was ſettled upon him (I could have wiſhed much my own Creditors had, about that time, ſhewn the like tenderneſs to me), and I moreover gave him time to receive the firſt quarter.

againſt me from my not having ſerved a regular apprenticeſhip, and without being moleſted by the Inquiſition.——Several Authors have choſen to relate, in Writings publiſhed after death, the perſonal advantages by which their performances had been followed: as for me, I have thought otherwiſe; and, fearing that during the latter part of my life I may be otherwiſe engaged, I have preferred to write now the account of my ſucceſſes in this Country, and to ſee it printed while I am yet living.

I ſhall add to the above narrative (whatever the Reader may be pleaſed to think of it) a few obſervations of rather a more ſerious kind, for the ſake of thoſe perſons who, judging themſelves to be poſſeſſed of abilities, find they are neglected by thoſe having it in their power to do them occaſional ſervices, and ſuffer themſelves to be mortified by it. To hope that Men will in earneſt aſſiſt in ſetting forth the mental qualifications of others, is an expectation which, generally ſpeaking, muſt needs be diſappointed. To procure one's notions and opinions to be attended to, and approved by the circle of one's acquaintance, is the univerſal wiſh of Mankind. To diffuſe theſe notions farther, to numerous parts of the Public, by means of the preſs or by others, becomes an object of real ambition; nor is this ambition always proportioned to the real abilities of thoſe who feel it: very far from it. When the appro-

bation of Mankind is in queſtion, all perſons (whatever their different ranks may be) conſider themſelves as being engaged in the ſame career: they look upon themſelves as being candidates for the very ſame kind of advantage: high and low, all are in that reſpect in a ſtate, it may be ſaid, of primæval equality; nor are thoſe who are likely to obtain ſome prize, to expect much favour from the others.

This deſire of having their ideas communicated to, and approved by the Public, was very prevalent among the Great Men of the Roman Commonwealth, and afterwards with the Roman Emperors; however imperfect the means of obtaining theſe ends might be in thoſe days, compared with thoſe which are uſed in our's. The ſame deſire has been equally remarkable among modern European Kings, not to ſpeak of other parts of the World: a long catalogue of Royal Authors may be produced; nor has it been, we may ſuppoſe, every King wiſhing that a compliment might be paid to his perſonal knowledge and abilities, that has ventured to give a public ſpecimen of them. Miniſters, eſpecially after having loſt their places, have ſhewn no leſs inclination than their Maſters, to convince Mankind of the reality of their knowledge. Noble Perſons of all denominations, have treated the Public with equal condeſcenſion, and have increaſed the catalogue. And to ſpeak of the Country in which we are, there is

it ſeems no good reaſon to make any exception in regard to it; and Great Men in it, or in general thoſe who are at the head of the People, are we find ſufficiently anxious about the fate of their own performances, about the ſucceſs of their Speeches, their Poems, and their Pamphlets.

Several additions were made to this Work, at the time I gave the firſt Engliſh Edition of it. Beſides a more accurate diviſion of the chapters, ſeveral new notes and paragraphs were inſerted in it, for inſtance in the 11th chapter of the 2d Book; and three new chapters, the 15th, 16th, and 17th, amounting to about ninety pages, were added to the ſame Book. Theſe three additional chapters, never having been written by me in French, have been inſerted in the third Edition made at Amſterdam, tranſlated by a perſon whom the Dutch Bookſeller employed for that purpoſe: as I never peruſed any copy of that Edition, I cannot ſay how well the Tranſlator has performed his taſk. Having now parted with the copy-right of the Book, I have farther added four new chapters to it (10, 11, B. I. 19, 20, B. II.) by way of taking a final leave of it; and in order the more completely to effect this, I may perhaps give, in a few months, a French Edition of the ſame (which I cannot tell why I have not done ſooner) in which all the above

mentioned additions, tranſlated by myſelf, ſhall be inſerted.

In one of the former additional Chapters (the 17th, B. II.) mention was made of a peculiar circumſtance attending the Engliſh Government, conſidered as a Monarchy, which is the ſolidity of the power of the Crown. As a proof of this peculiar ſolidity, it was remarked, that all the Monarchs who ever exiſted, in any part of the world, were never able to maintain their ground againſt certain powerful ſubjects (or a combination of them) without the aſſiſtance of regular forces at their conſtant command; whereas it is evident that the power of the Crown, in England, is not at this day ſupported by ſuch means; nor even had the Engliſh Kings a guard of more than a few ſcores of Men, when their power, and the exertions they at times made of it, were equal to what has ever been related of the moſt abſolute Roman Emperors.

The cauſe of this peculiarity in the Engliſh Government, was ſaid to lie in the circumſtance of the great or powerful Men, in England, being divided into two diſtinct Aſſemblies, and at the ſame time, in the principles on which ſuch diviſion is formed. As a farther proof of the ſolidity of the power of the Crown here alluded to, may be mentioned the facility, and ſafety to it-

ſelf and to the State, with which the Crown has at all times been able to deprive any particular Subjects of their different offices, however overgrown, and even dangerous, their private power may have ſeemed to be. A very remarkable inſtance of this kind occurred, when the great Duke of Marlborough was ſuddenly removed from all his employments: the following is the account given by Dean Swift, in his "Hiſtory of the "Four laſt Years of the Reign of Queen Anne."

"So that the Queen found herſelf under a "neceſſity, by removing one perſon from ſo great "a truſt, to get clear of all her difficulties at "once: her Majeſty determined upon the latter "expedient, as the ſhorter and ſafer courſe; and "during the receſs at Chriſtmas, ſent the Duke "a letter to tell him ſhe had no farther occaſion "for his ſervice.

"There has not perhaps in the preſent age been "a clearer inſtance to ſhew the inſtability of power, "which is not founded on virtue; and it may be "an inſtruction to Princes, who are well in the "hearts of their People, that the overgrown power "of any particular perſon, although ſupported by "exorbitant wealth, can, by a little reſolution, "be reduced in a moment, without any dangerous "conſequences. This Lord, who was, beyond "all compariſon, the greateſt ſubject in Chriſten-

" dom, found his power, credit, and influence " crumble away on a ſudden ; and, except a few " friends and followers, the reſt dropped off in courſe, &c." (B. I. near the end).

The eaſe with which ſuch a Man as the Duke was ſuddenly removed, Dean Swift has explained, by the neceſſary advantages of Princes who poſſeſs the affection of their People, and the natural weakneſs of power which is not founded on virtue: but theſe are very unſatisfactory explanations. The Hiſtory of Europe, in former times, offers a continued ſeries of examples to the contrary, and exhibits inſtances without number, of Princes either inceſſantly engaged in reſiſting in the field the competition of Subjects inveſted with the eminent dignities of the Realm, who were not by any means ſuperior to them in point of virtue, or living in a continued ſtate of vaſſalage under ſome powerful Man, whom they durſt not diſmiſs (*a*).

(*a*) Certain Kings, like Henry the Third, of France, in regard to the Dukes of Guiſe, had at laſt recourſe to aſſaſſination; and ſuch an expedient is the ſettled method adopted by the Eaſtern Monarchs ; nor is it very ſure they can always do otherwiſe. In England, war has indeed ſometimes been waged againſt the King ; but it is eſſential to obſerve, that it has never been done but by perſons who poſitively laid claim to the Crown. As to Cromwell, when he oppoſed Charles the Firſt, it was (as every one knows, who has read that part of the Engliſh Hiſtory) in the King's own name he made war againſt him.

The cauſe of the peculiarity, and in ſhort the political phænomenon in the Engliſh Conſtitution, which we mention, certainly lies in the frame of the Engliſh Parliament, and the diviſion of the great Men in the State, that takes place in it. To attempt to give a demonſtration of this aſſertion otherwiſe than by facts (as is done in the Chapter here alluded to) would lead into difficulties which the reader is little aware of. In general, the Science of Politics, conſidered as an *exact Science*, that is to ſay, as a Science capable of actual demonſtration, is infinitely deeper than the reader ſo much perhaps as ſuſpects. The knowledge of Man, on which ſuch a Science, with its preliminary axioms and definitions, is to be grounded, has hitherto remained ſurpriſingly imperfect: no tolerable explanation of that continual human phænomenon, laughter, has been given, as yet; and the powerful, complicate, ſenſation which each ſex produces in the other, ſtill remains an equally inexplicable myſtery. To conclude the above digreſſion (which may do very well for a Preface) I ſhall only add, that thoſe Speculators who will amuſe themſelves in ſeeking for the *demonſtration* of the political Theorem above expreſſed, will thereby be led through a field of obſervations which they will at firſt little expect; and in their way towards attaining ſuch demonſtration, will find the Science, commonly called Metaphyſics, to be at beſt but a very ſuperficial one, and that the Mathematics, or at leaſt the

mathematical reaſonings hitherto uſed by Men, are not ſo completely free from error as has been thought (*a*).

Out of the four Chapters added to the preſent Edition, two (the 10th and 11th, B. I.) contain among other things, a few ſtrictures on the Courts of Equity; in which I wiſh it may be found I have not been miſtaken: of the two others, the one (19th, B. II.) contains a few obſervations on the attempts that may in different circumſtances be made, to ſet new limits on the authority of the Crown; and in the 20th, a few general thoughts are introduced on the right of taxation, and on the claim of the American Colonies in that reſpect. Any farther obſervations I may hereafter make on the Engliſh Government, ſuch as comparing it with the other Governments of Europe, and examining what difference in the manners of the inhabitants of this Country may have reſulted from it, muſt come in a new Work, if I ever undertake to treat theſe ſubjects. In regard to the American diſputes, what I may hereafter write on that account, will be introduced in a Work which I may at ſome future time publiſh, under the title of *Hiſtoire de George*

(*a*) Certain errors that are not diſcovered, are in ſeveral caſes, compenſated by others, which are equally unperceived.

Trois, Roi d'Angleterre, or perhaps, of *Hiſtoire d'Angleterre, depuis l'année* 1765 (that in which the American Stamp duty was laid) *juſques à l'année*, 178—meaning that in which an end ſhall be put to the preſent conteſts (*a*).

(*a*) A certain Book written in French, on the ſubject of the American diſputes, was, I have been told, lately attributed to me, in which I had no ſhare whatever.

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THE CONSTITUTION OF ENGLAND.

INTRODUCTION.

THE ſpirit of Philoſophy which peculiarly diſtinguiſhes the preſent age, after having corrected a number of errors fatal to Society, ſeems now to be directed towards the principles of Society itſelf; and we ſee prejudices vaniſh, which are difficult to overcome, in proportion as it is dangerous to attack them *(a)*. This riſing freedom of ſen-

(a) As every popular notion, which may contribute to the ſupport of an arbitrary Government, is at all times vigilantly protected by the whole ſtrength of it, political

timent, the neceſſary forerunner of political freedom, led me to imagine that it would not be unacceptable to the Public, to be made acquainted with the principles of a conſtitution, on which the eye of curioſity ſeems now to be univerſally turned; and which, though celebrated as a model of perfection, is yet but litle known to its admirers.

I am aware that it will be deemed preſumptuous in a Man who has paſſed the greateſt part of his life out of England, to attempt a delineation of the Engliſh Government; a ſyſtem, whieh is ſuppoſed to be ſo complicated as not to be underſtood, or developed, but by thoſe who have been initiated in the myſteries of it from their infancy.

But, though a foreigner in England, yet as a native of a free Country, I am no ſtranger to thoſe circumſtances which conſtitute or characteriſe liberty! even the great diſproportion between the Republic of which I am

prejudices are, laſt of all, if ever, ſhaken off by a Nation ſubjected to ſuch a Government. A great change in this reſpect, however, has of late taken place in France, where this book was firſt publiſhed, and opinions are now diſcuſſed there, and tenets avowed, which, in the time of Lewis the Fourteenth, would have appeared downright blaſphemy: it is to this an alluſion is made above.

a member and in which I formed my principles, and the Britiſh Empire, has perhaps only contributed to facilitate my political inquiries.

As the Mathematician, the better to diſcover the proportions he inveſtigates, begins with freeing his *equation* from *coefficients* or ſuch other quantities as only perplex, without properly conſtituting, it—ſo it may be advantageous to the inveſtigator of the cauſes that produce the equilibrium of a government, to have previouſly ſtudied them, diſengaged from the apparatus of fleets, armies, foreign trade, diſtant and extenſive dominions, in a word, from all thoſe brilliant circumſtances which ſo greatly affect the external appearance of a powerful Society, but have no eſſential connection with the real principles of it.

It is upon the paſſions of Mankind, that is, upon cauſes which are unalterable, that the action of the various parts of a State depends. The machine may vary as to its dimenſions, but its movement and acting ſprings ſtill remain intrinſically the ſame; and that time cannot in any ſhape be conſidered as loſt, which has been ſpent in ſeeing them act and move in a narrower circle.

One other conſideration I will ſuggeſt, which is, that the very circumſtance of being a foreigner may of itſelf be attended, in this caſe, with a degree of advantage. The Engliſh themſelves (the obſervation cannot give them any offence) having their eyes open, as I may ſay, upon their liberty, from their firſt entrance into life, are perhaps too much familiariſed with its enjoyment, to enquire, with real concern, into its cauſes. Having acquired practical notions of their government, long before they have meditated on it, and theſe notions being ſlowly and gradually imbibed, they at length behold it without any high degree of ſenſibility; and they ſeem to me, in this reſpect, to be like the recluſe inhabitant of a palace, who is perhaps in the worſt ſituation for attaining a complete idea of the whole, and never experienced the ſtriking effect of its external ſtructure and elevation; or, if you pleaſe, like a Man who, having always had a beautiful and extenſive ſcene before his eyes, continues for ever to view it with indifference.

But a ſtranger, beholding at once the various parts of a Conſtitution diſplayed before him, which, at the ſame time that it carries liberty to its height, has guarded againſt in-

conveniences ſeemingly inevitable, beholding in ſhort thoſe things carried into execution, which he had ever regarded as more deſirable than poſſible, he is ſtruck with a kind of admiration; and it is neceſſary to be thus ſtrongly affected by objects, to be enabled to reach the general principle which governs them.

Not that I mean to inſinuate that I have penetrated with more acuteneſs into the Conſtitution of England than others; my only deſign in the above obſervations was to obviate an unfavourable, though natural prepoſſeſſion; and if, either in treating of the cauſes which originally produced the Engliſh liberty, or of thoſe by which it is ſtill maintained, my obſervations ſhould be found new or ſingular, I hope the Engliſh reader will not condemn them, but where they ſhall be found inconſiſtent with Hiſtory, or with daily experience. Of my readers in general I alſo requeſt, that they will not judge of the principles I ſhall lay down, but from their relation to thoſe of human nature: a conſideration which is almoſt the only one eſſential, and has been hitherto too much neglected by the Writers on the ſubject of Government.

CHAP. I.

Cauſes of the liberty of the Engliſh Nation.—Reaſons of the difference between the Government of England, and that of France.—In England, the great power of the Crown, under the Norman kings, created an union between the Nobility and the People.

WHEN the Romans, attacked on all ſides by the Barbarians, were reduced to the neceſſity of defending the centre of their Empire, they abandoned Great Britain as well as ſeveral other of their diſtant provinces. The Iſland, thus left to itſelf, became a prey to the nations inhabiting the ſhores of the Baltic; who, having firſt deſtroyed the ancient inhabitants, and for a long time reciprocally annoyed each other, eſtabliſhed ſeveral Sovereignties in the ſouthern part of the Iſland, afterwards called England, which at length were united, under Egbert, into one Kingdom.

The ſucceſſors of this Prince, denomiated the Anglo-Saxon Princes, among whom Alfred the Great and Edward the Confeſſor are particularly celebrated, reigned for about two hundred years; but, though our knowledge of the prin-

cipal events of this early period of the Engliſh Hiſtory is in ſome degree exact, yet we have but vague and uncertain accounts of the nature of the Government which thoſe Nations introduced.

It appears to have had little more affinity with the preſent Conſtitution, than the general relation, common indeed to all the Governments eſtabliſhed by the Northern Nations, that of having a King and a Body of Nobility; and the ancient Saxon Government is "left us in ſtory (to uſe the expreſſions of "Sir William Temple on the ſubject) but like "ſo many antique, broken, or defaced pic-"tures, which may ſtill repreſent ſomething "of the cuſtoms and faſhions of thoſe ages, "though little of the true lines, proportions, "or reſemblance." *(a)*.

It is at the era of the Conqueſt, that we are to look for the real foundation of the Engliſh Conſtitution. From that period, ſays Spelman, *novus ſociorum naſcitur ordo.* *(b)* William of Normandy, having defeated Harold, and made

(a) See his Introduction to the Hiſtory of England.

(b) See Spelman, *Of Parliaments.*—It has been a favourite theſis with many Writers, to pretend that the Saxon Government was, at the time of the Conqueſt, by

himſelf maſter of the Crown, ſubverted the ancient fabric of the Saxon Legiſlation: he no means ſubverted; that William of Normandy legally acceded to the Throne, and conſequently to the engagements, of the Saxon Kings; and much argument has in particular been employed with regard to the word *Conqueſt*, which, it was ſaid, in the feudal ſenſe only meant *acquiſition*. Theſe opinions have been particularly inſiſted upon in times of popular oppoſition: and indeed there was a far greater probability of ſucceſs, in raiſing among the People the notions familiar to them of legal claims and long eſtabliſhed cuſtoms, than in arguing with them from the no leſs rational, but leſs determinate and ſomewhat dangerous doctrines, concerning the original rights of Mankind, and the lawfulneſs of at all times oppoſing force to an oppreſſive Government.

But if we conſider, that the manner in which the public Power is formed in a State, is ſo very eſſential a part of its Government, and that a thorough change in this reſpect was introduced into England by the Conqueſt, we ſhall not ſcruple to allow that a new *Government* was eſtabliſhed. Nay, as almoſt the whole landed property in the Kingdom was at that time transferred to other hands, a new Syſtem of criminal Juſtice introduced, and the language of the law moreover altered, the revolution may be ſaid to have been ſuch as is not perhaps to be paralleled in the Hiſtory of any other Country.

Some Saxon laws, favourable to the liberty of the people, were indeed again eſtabliſhed under the ſucceſſors of William; but the introduction of ſome new modes of proceeding in the Courts of Juſtice, and of a few particular laws, cannot, ſo long as the ruling Power

exterminated, or expelled, the former occupiers of lands, in order to diſtribute their poſſeſſions among his followers; and eſtabliſhed the feudal ſyſtem of Government, as better adapted to his ſituation, and indeed the only one of which he poſſeſſed a competent idea.

in the State remains the ſame, be ſaid to be the introduction of a new Government; and, as when the laws in queſtion were again eſtabliſhed the public power in England continued in the ſame channel where the Conqueſt has placed it, they were more properly new modifications of the Anglo-Norman Conſtitution, than they were the abolition of it; or, ſince they were again adopted from the Saxon Legiſlation, they were rather imitations of that legiſlation, than the reſtoration of the Saxon Government.

Contented, however, with the two authorities I have above quoted, *(Spelman and Temple)* I ſhall dwell no longer on a diſcuſſion of the preciſe identity, or difference, of two Governments, that is, of two ideal ſyſtems, which only exiſt in the conceptions of men. Nor do I wiſh to explode a doctrine, which, in the opinion of ſome perſons, giving an additional ſanction and dignity to the Engliſh Government, contributes to increaſe their love and reſpect for it. It will be ſufficient for my purpoſe, if the Reader ſhall be pleaſed to grant that a material change was, at the time of the Conqueſt, effected in the Government then exiſting, and is, in conſequence, diſpoſed to admit the proofs that will preſently be laid before him, of ſuch change having prepared the eſtabliſhment of the preſent Engliſh Conſtitution.

This ſort of Government prevailed alſo in almoſt all the other parts of Europe. But, inſtead of being eſtabliſhed by dint of arms and all at once, as in England, it had only been eſtabliſhed on the Continent, and particularly in France, through a long ſeries of ſlow ſucceſſive events; a difference of circumſtances this, from which conſequences were in time to ariſe, as important as they were at firſt difficult to be foreſeen.

The German Nations who paſſed the Rhine to conquer Gaul, were in a great degree independent. Their princes had no other title to their power, but their own valour and the free election of the People; and as the latter had acquired in their foreſts but contracted notions of ſovereign authority, they followed a Chief, leſs in quality of ſubjects, than as companions in conqueſt.

Beſides, this conqueſt was not the irruption of a foreign army which only takes poſſeſſion of fortified towns. It was the general invaſion of a whole People, in ſearch of new habitations; and as the number of the Conquerors bore a great proportion to that of the conquered, who were at the ſame time enervated by long peace, the expedition was no ſooner compleated than

all danger was at an end, and of courſe their union alſo. After dividing among themſelves what lands they thought proper to occupy, they ſeparated; and though their tenure was at firſt only precarious, yet, in this particular, they depended not on the King, but on the general aſſembly of the Nation *(a)*.

Under the Kings of *the firſt race*, the fiefs, by the mutual connivance of the Leaders, at firſt became annual; afterwards, held for life. Under the deſcendants of Charlemain, they became hereditary. *(b)* And when at length Hugh Capet effected his own election to the prejudice of Charles of Lorrain, intending to render the Crown, which in fact was a fief, hereditary in his own family, *(c)* he eſtabliſhed the hereditariſhip of fiefs as a general principle; and from

(a) The fiefs were originally called, *terræ jure beneficii conceſſæ*; and it was not till under Charles *le Gros* the term *fief* began to be in uſe.—See BENEFICIUM, *Gloſſ. Du Cange.*

(b) Apud Francos vero, ſenſim pedetentimque, jure hæreditario ad hæredes tranſierunt feuda; quod labente ſæculo nono incipit. See FEUDUM---Du Cange.

(c) Hottoman has proved beyond a doubt, in his *Franeogallia*, that under the two firſt races of Kings, the Crown of France was elective. The Princes of the reigning family had nothing more in their favour, than the cuſtom of chuſing one of that houſe.

this epoch, authors date the complete eſtabliſhment of the feudal ſyſtem in France.

On the other hand, the Lords who gave their ſuffrages to Hugh Capet, forgot not the intereſt of their own ambition. They compleated the breach of thoſe feeble ties which ſubjected them to the royal authority, and became every where independent. They left the King no juriſdiction either over themſelves, or their Vaſſals; they reſerved the right of waging war with each other; they even aſſumed the ſame privilege, in certain caſes, with regard to the King himſelf; *(a)* ſo that if Hugh Capet, by rendering the Crown hereditary, laid the foundation of the greatneſs of his family, and of the Crown itſelf, yet he added little to his own authority, and acquired ſcarcely any thing more than a nominal ſuperiority over the number of

(*a*) The principal of theſe caſes was when the King refuſed to appoint Judges to decide a difference between himſelf and one of his firſt Barons; the latter had then a right to take up arms againſt the King; and the ſubordinate Vaſſals were ſo dependent on their immediate Lords, that they were obliged to follow them againſt the Lord Paramount. St. Louis, though the power of the Crown was in his time much increaſed, was obliged to confirm both this privilege of the firſt Barons, and this obligation of their Vaſſals.

Sovereigns who then ſwarmed in France. *(a)*

But the eſtabliſhment of the feudal ſyſtem in England, was an immediate and ſudden conſequence of that conqueſt which introduced it. Beſides, this conqueſt was made by a Prince who kept the greater part of his army in his own pay, and who was placed at the head of a people over whom he was an hereditary Sovereign: circumſtances, which gave a totally different turn to the Government of that kingdom.

Surrounded by a warlike, though a conquered Nation, William kept on foot a part of his army. The Engliſh, and after them the Normans themſelves, having revolted, he cruſhed both; and the new King of England, at the head of victorious troops, having to do with two Nations who lay under a reciprocal check from the enmity they bore to each other,

(a) "The Grandees of the Kingdom," ſays Mezeray, "thought that Hugh Capet ought to put up with all "their inſults, becauſe they had placed the Crown on "his head: nay, ſo great was their licentiouſneſs, that "on his writing to Audebert, Viſcount of Perigueux, "ordering him to raiſe the ſiege he had laid to Tours, "and aſking him, by way of reproach, who had made "him a Viſcount? that Nobleman haughtily anſwered, "*Not you, but thoſe who made you a King.* [Non pas "vous, mais ceux qui vous ont fait Roi.]"

and were moreover equally ſubdued by a ſenſe of their unfortunate attempts of reſiſtance, found himſelf in the moſt favourable circumſtances for becoming an abſolute Monarch; and his laws, thus promulgated in the midſt as it were of thunder and lightning, impoſed the yoke of deſpotiſm both on the victors and the vanquiſhed.

He divided England into ſixty thouſand two hundred and fifteen military fiefs, all held of the Crown; the poſſeſſors of which were, on pain of forfeiture, to take up arms and repair to his ſtandard on the firſt ſignal: he ſubjected not only the common people, but even the barons, to all the rigours of the feudal Government. He even impoſed on them his tyrannical foreſt laws. *(a)*

He aſſumed the prerogative of impoſing taxes. He inveſted himſelf with the whole executive power of Government. But what

(a) He reſerved to himſelf an excluſive privilege of killing game throughout all England, and enacted the ſevereſt penalties on all who ſhould attempt it without his permiſſion. The ſuppreſſion, or rather mitigation of theſe penalties, was one of the articles of the *Charta de Foreſta*, which the Barons afterwards obtained by force of arms. *Nullus de cetero amittat vitam, vel membra, pro venatione noſtrâ.* Ch. de Foreſt, Art. 10.

was of the greateſt conſequence, he arrogated to himſelf the moſt extenſive judicial power in the eſtabliſhment of the Court which was called *Aula Regis*; a formidable tribunal, which received appeals from all the Courts of the Barons, and decided in the laſt reſort on the eſtates, honour, and lives of the Barons themſelves, and which, being wholly compoſed of the great officers of the Crown, removable at the King's pleaſure, and having the King himſelf for Preſident, kept the firſt Nobleman in the Kingdom under the ſame controul as the meaneſt ſubject.

Thus, while the Kingdom of France, in conſequenee of the ſlow and gradual formation of the feudal Government, found itſelf, in the iſſue, compoſed of a number of parts ſimply placed by each other, and without any reciprocal adherence, the Kingdom of England on the contrary, in conſequence of the ſudden and violent introduction of the ſame ſyſtem, became a compound of parts united by the ſtrongeſt ties; and the regal Authority, by the preſſure of its immenſe weight, conſolidated the whole into one compact indiſſoluble body.

To this difference in the original Conſtitution of France and England, that is, in the original power of their Kings, we are to attri-

bute the difference, ſo little analogous to its original cauſe, of their preſent Conſtitutions. It is this which furniſhes the ſolution of a problem which, I muſt confeſs, for a long time perplexed me, and explains the reaſon why, of two neighbouring Nations, ſituated almoſt under the ſame climate, and having one common origin, the one has attained the ſummit of liberty, the other has gradually ſunk under the moſt abſolute Monarchy.

In France the royal Authority was indeed inconſiderable; but this circumſtance was by no means favourable to the general liberty. The Lords were every thing; and the bulk of the Nation were accounted nothing. All thoſe wars which were made on the King, had not liberty for their object; for of this their Chiefs already enjoyed but too great a ſhare: they were the mere effects of private ambition or caprice. The People did not engage in them as aſſociates in the ſupport of a cauſe common to all; they were dragged, blindfold and like ſlaves, to the ſtandard of their Leaders. In the mean time, as the laws by virtue of which their Maſters were conſidered as Vaſſals, had no relation to thoſe by which they were themſelves bound as ſubjects, the reſiſtance, of which they were made

the inſtruments, never produced any advantageous conſequence in their favour, nor did it eſtabliſh any principle of freedom that was in any caſe applicable to them.

The inferior Nobles, who ſhared in the independence of the ſuperior Nobility, added alſo the effects of their own inſolence to the deſpotiſm of ſo many Sovereigns; and the People, wearied out by ſufferings, and rendered deſperate by oppreſſion, at times attempted to revolt. But, being parcelled out into ſo many different States, they could never perfectly agree, either in the nature, or the times of their complaints. The inſurrections which ought to have been general, were only ſucceſſive and particular. In the mean time the Lords, ever uniting to avenge their common cauſe as Maſters, fell with irreſiſtible advantage on Men who were divided; the People were thus ſeparately, and by force, brought back to their former yoke; and Liberty, that precious offspring which requires ſo many favourable circumſtances to foſter it, was every where ſtifled in its birth *(a)*.

(a) It may be ſeen in Mezeray, how the Flemings, at the time of the great revolt which was cauſed, as he ſays, "by the inveterate hatred of the Nobles (les Gentilſ-"hommes) againſt the people of Ghent," were cruſhed

At length, when by conqueſts, by eſcheats, or by Treaties, the ſeveral Provinces came to be *re-united (a)* to the extenſive and continually increaſing dominions of the Monarch, they became ſubject to their new Maſter, already trained

by the union of almoſt all the Nobility of France.—*See Mezeray, Reign of Charles* VI.

(a) The word *re-union* expreſſes in the French law, or Hiſtory, the reduction of a Province to an immediate dependence on the Crown. The French Lawyers, who were at all times remarkably zealous for the aggrandiſement of the Crown (a zeal which would not have been blameable, if it had been exerted only in the ſuppreſſion of lawleſs Ariſtocracy) always contended, that when a province once came into the poſſeſſion of the King, even any private dominion of his before he acceded to the Throne, it became *re-united* for ever: the *Ordonnance* of Moulins, in the year 1566, has ſince given a thorough ſanction to theſe principles. The re-union of a province might be occaſioned, firſt, by the caſe juſt mentioned, of the acceſſion of the poſſeſſor of it to the Throne: thus at the acceſſion of Henry IV. (the ſiſter of the late King being excluded by the Salic law) Navarre and Bearn were *re-united.* Secondly, by the felony of the poſſeſſor, when the King was able to enforce by dint of arms, the judgment paſſed by the Judges he had appointed: thus the ſmall Lordſhip of Rambouillet was ſeized upon by Hugh Capet, on which authors remark that it was the firſt dominion that was re-united; and the Duchy of Normandy was afterwards taken in the ſame manner by Philip Auguſtus from John King of England, condemned for the murder of Arthur Duke of Britanny. Thirdly, by the laſt will of the poſſeſſor: Provence was re-united in this man-

to obedience. The few privileges which the Cities had been able to preſerve, were little reſpected by a Sovereign who had himſelf entered into no engagement for that purpoſe; and as the *re-unions* were made at different times, the King was always in a condition to overwhelm every new Province that accrued to him, with the weight of all thoſe he already poſſeſſed.

ner, under the reign of Lewis XI. Fourthly, by intermarriages: this was the caſe of the County of Champagne, under Philip the Fair; and of Britanny under Francis I. Fifthly, by the failure of heirs of the blood, and ſometimes of heirs male: thus Burgundy was ſeized upon by Lewis XI. after the death of Charles the Bold, Duke of that Province, Laſtly, by purchaſes: thus Philip of Valois purchaſed the Barony of Montpellier; Henry IV. the Marquiſat of Saluces; Lewis XIII. the Principality of Sedan, &c.

Theſe different Provinces, which, with others united, or *re-united*, after a like manner, now compoſe the French Monarchy, not only thus conferred on their reſpective Sovereigns different titles, but alſo differed from each other with reſpect to the laws which they followed, and ſtill follow: the one are governed by the Roman law, and are called *Pays de Droit écrit*; the others follow particular cuſtoms, which in proceſs of time have been ſet down in writing and are called *Pays de Droit Coutumier*. In thoſe Provinces the people had, at times, purchaſed privileges from their Princes, which in the different Provinces were alſo different, according to the wants and temper of the Princes who granted them.

As a farther conſequence of theſe differences between the times of the *re-unions*, the ſeveral parts of the Kingdom entertained no views of aſſiſting each other. When ſome reclaimed their privileges, the others, long ſince reduced to ſubjection, had already forgotten their's. Beſides, theſe privileges, by reaſon of the differences in the Governments under which the Provinces had formerly been held, were alſo almoſt every where different: the circumſtances which happened in one place, thus bore little affinity to thoſe which fell out in another; the ſpirit of union was loſt, or rather had never exiſted: each Province, reſtrained within its particular bounds, only ſerved to inſure the general ſubmiſſion; and the ſame cauſes which had reduced that warlike, ſpirited Nation, to a yoke of ſubjection, concurred alſo to keep them under it.

Thus Liberty periſhed in France, becauſe it wanted a favourable culture and proper ſituation. Planted, if I may ſo expreſs myſelf, but juſt beneath the ſurface, it preſently expanded, and ſent forth ſome large ſhoots; but having taken no root, it was ſoon plucked up. In England, on the contrary, the ſeed lying at a great depth, and being covered with an enormous weight, ſeemed at firſt to be ſmothered;

but it vegetated with the greater force; it imbibed a more rich and abundant nouriſhment; its ſap and juice became better aſſimilated, and it penetrated and filled up with its roots the whole body of the ſoil. It was the exceſſive power of the King which made England free, becauſe it was this very exceſs that gave riſe to the ſpirit of union, and of co-reſiſtance. Poſſeſſed of extenſive demeſnes, the King found himſelf independent; veſted with the moſt formidable prerogatives, he cruſhed at pleaſure the moſt powerful Barons in the Realm: it was only by cloſe and numerous confederacies, therefore, that theſe could reſiſt his tyranny; they even were compelled to aſſociate the People in them, and make them partners of public Liberty.

Aſſembled with their Vaſſals in their great Halls, where they diſpenſed their hoſpitality, deprived of the amuſements of more poliſhed Nations, naturally inclined, beſides, freely to expatiate on objects of which their hearts were full, their converſation naturally turned on the injuſtice of the public impoſitions, on the tyranny of the judicial proceedings, and, above all, on the deteſted foreſt laws.

Deſtitute of an opportunity of cavilling about the meaning of laws, of which the terms were preciſe, or rather diſdaining the reſource of ſophiſtry, they were naturally led to examine into the firſt principles of Society: they enquired into the foundations of human authority, and became convinced, that Power, when its object is not the good of thoſe who are ſubject to it, is nothing more than the *right of the ſtrongeſt*, and may be repreſſed by the exertion of a ſimilar right.

The different orders of the feudal Government, as eſtabliſhed in England, being connected by tenures exactly ſimilar, the ſame maxims which were laid down as true againſt the Lord paramount in behalf of the Lord of an upper fief, were likewiſe to be admitted againſt the latter, in behalf of the owner of an inferior fief. The ſame maxims were alſo to be applied to the poſſeſſor of a ſtill lower fief: they farther deſcended to the freeman, and to the peaſant; and the ſpirit of liberty, after having circulated through the different branches of the feudal ſubordination, thus continued to flow through ſucceſſive homogeneous channels; it forced to itſelf a paſſage into the remoteſt ramifications, and the principle of primeval equa-

lity became every where diffuſed and eſtabliſhed. A ſacred principle, which neither injuſtice nor ambition can eraſe; which exiſts in every breaſt, and, to exert itſelf, requires only to be awakened among the numerous and oppreſſed claſſes of Mankind.

But when the Barons, whom their perſonal conſequence had at firſt cauſed to be treated with caution and regard by the Sovereign, began to be no longer ſo, when the tyrannical laws of the Conqueror became ſtill more tyrannically executed, the confederacy, for which the general oppreſſion had paved the way, inſtantly took place. The Lord, the Vaſſal, the inferior Vaſſal, all united. They even implored the aſſiſtance of the peaſants and cottagers; and that haughty averſion with which on the Continent the Nobility repaid the induſtrious hands which fed them, was, in England, compelled to yield to the preſſing neceſſity of ſetting bounds to the Royal authority.

The People, on the other hand, knew that the cauſe they were called upon to defend, was a cauſe common to all; and they were ſenſible, beſides, that they were the neceſſary ſupporters of it. Inſtructed by the example of their Leaders, they ſpoke and ſtipulated

conditions for themſelves: they inſiſted that, for the future, every individual ſhould be intitled to the protection of the law; and thus did thoſe rights with which the Lords had ſtrengthened themſelves, in order to oppoſe the tyranny of the Crown, become a bulwark which was, in time, to reſtrain their own.

CHAP. II.

A ſecond advantage England had over France: —it formed one undivided State.

IT was in the reign of Henry the Firſt, about forty years after the Conqueſt, that we ſee the above cauſes begin to operate. This Prince having aſcended the Throne to the excluſion of his elder brother, was ſenſible that he had no other means to maintain his power than by gaining the affection of his ſubjects; but, at the ſame time, he perceived that it muſt be the affection of the whole nation: he, therefore, not only mitigated the rigour of the feudal laws in favour of the Lords, but alſo annexed as a condition to the Charter he granted, that the Lords ſhould allow the ſame freedom to their reſpective Vaſſals. Care was even taken to

aboliſh thoſe laws of the Conqueror which lay heavieſt on the loweſt claſs of the People *(a)*.

Under Henry the Second, liberty took a farther ſtride; and the ancient *Tryal by jury*, a mode of procedure which is at preſent one of the moſt valuable parts of the Engliſh law, made again, though imperfectly, its appearance.

But theſe cauſes, which had worked but ſilently and ſlowly under the two Henrys, who were Princes in ſome degree juſt, and of great capacity, manifeſted themſelves, at once, under the deſpotic reign of King John. The royal prerogative, and the foreſt laws, having been exerted by this Prince to a degree

(a) Amongſt others, the law of the *Curfeu*. It might be matter of curious diſcuſſion to inquire what the Anglo-Saxon Government would in proceſs of time have become, and of courſe the Government of England be at this preſent time, if the event of the Conqueſt had never taken place; which, by conferring an immenſe as well as unuſual power on the Head of the feudal Syſtem, compelled the Nobility to contract a laſting and ſincere union with the People. It is very probable that the Engliſh Government would at this day be the ſame as that which long prevailed in Scotland, where the King and Nobles engroſſed, jointly, or by turns, the whole power in the State, the ſame as in Sweden, the ſame as in Denmark, Countries whence the Anglo-Saxons came.

of exceſſive ſeverity, he ſoon beheld a general confederacy formed againſt him: and here we muſt obſerve another circumſtance, highly advantageous, as well as peculiar to England.

England was not, like France, an aggregation of a number of different Sovereignties: it formed but one ſtate, and acknowledged but one Maſter, one general title. The ſame laws, the ſame kind of dependence, conſequently the ſame notions, the ſame intereſts, prevailed throughout the whole. The extremities of the kingdom could, at all times, unite to give a check to the exertions of an unjuſt power. From the river Tweed to Portſmouth, from Yarmouth to the Land's End, all was in motion: the agitation increaſed from the diſtance like the rolling waves of an extenſive ſea; and the Monarch, left to himſelf, and deſtitute of reſources, ſaw himſelf attacked on all ſides by an univerſal combination of his ſubjects.

No ſooner was the ſtandard ſet up againſt John, than his very courtiers forſook him. In this ſituation, finding no part of his kingdom leſs irritated againſt him than another, having no detached province which he could engage in his defence by promiſes of pardon,

or of particular conceſſions, the trivial though never-failing reſources of Government, he was compelled, with ſeven of his attendants, all that remained with him, to ſubmit himſelf to the diſpoſal of his ſubjects; and he ſigned at Runing Mead *(a)* the Charter of the Foreſt, together with the famous charter, which, from its ſuperior and extenſive importance, is denominated *Magna Charta.*

By the former, the moſt tyrannical part of the foreſt laws was aboliſhed; and by the latter, the rigour of the feudal laws was greatly mitigated in favour of the Lords. But this Charter did not ſtop there; conditions were alſo ſtipulated in favour of the numerous body of the people, who had concurred to obtain it, and who claimed, with ſword in hand, a ſhare in that ſecurity it was meant to eſtabliſh. It was hence inſtituted by the Great Charter, that the ſame ſervices which were remitted in favour of the Barons, ſhould be in like manner remitted in favour of their Vaſſals. This Charter moreover eſtabliſhed an equality of weights and meaſures throughout England; it exempted the Merchants from arbitrary impoſts, and gave

(a) Anno 1215.

them liberty to enter and depart the Kingdom at pleaſure: it even extended to the loweſt orders of the State, ſince it enacted, that the *Villain*, or Bondman, ſhould not be ſubject to the forfeiture of his implements of tillage. Laſtly, by the twenty-ninth article of the ſame Charter, it was enacted, that no Subject ſhould be exiled, or in any ſhape whatever moleſted, either in his perſon or effects, otherwiſe than by judgment of his peers, and according to the law of the land *(a)*: an article ſo important, that it may be ſaid to comprehend the whole end and deſign of political ſocieties; and from that moment the Engliſh would have been a free People, if there were not an immenſe diſtance between the making of laws, and the obſerving of them.

But though this Charter wanted moſt of thoſe ſupports which were neceſſary to inſure reſpect to it, though it did not ſecure to the

(a) "Nullus liber homo capiatur, vel impriſonetur, "vel diſſeſietur de libero tenemento ſuo, vel libertatibus "vel liberis conſuetudinibus ſuis; aut utlagetur, aut "exuletur, aut aliquo modo deſtruatur; nec ſuper eum "ibimus, nec ſuper eum mittemus, niſi per legale ju-"dicium parium ſuorum, vel per legem terræ. Nulli "vendemus, nulli negabimus, aut differemus, juſtitiam "vel rectum." *Magna Chart.* cap. xxix.

poor and friendleſs any certain and legal methods of obtaining the execution of it, (proviſions which numberleſs tranſgreſſions alone could, in proceſs of time, point out) yet it was a prodigious advance towards the eſtabliſhment of public liberty. Inſtead of the general maxims reſpecting the rights of the People and the duties of the Prince, (maxims againſt which ambition perpetually contends, and which it ſometimes even openly and abſolutely denies) here was ſubſtituted a written law, that is, a truth admitted by all parties, which no longer required the ſupport of argument. The rights and privileges of the individual, as well in his perſon as in his property, became ſettled axioms. The Great Charter, at firſt enacted with ſo much ſolemnity, and afterwards confirmed at the beginning of every ſucceeding reign, was, as it were, a general banner perpetually ſet up for the union of all claſſes of the people; and the foundation was laid on which thoſe equitable laws were to riſe, which offer the ſame aſſiſtance to the poor and weak, as to the rich and powerful *(a)*.

(a) The reader, to be more fully convinced of the reality of the cauſes to which the liberty of England has been here aſcribed, as well as of the truth of the obſer-

Under the long reign of Henry the Third, the differences which aroſe between the King and the Nobles, rendered England a ſcene of confuſion. Amidſt the viciſſitudes which the fortune of war produced in their mutual conflicts, the People became ſtill more and more ſenſible of their importance, and ſo did in conſequence both the King and the Barons alſo. Alternately courted by both parties, they obtained a confirmation of the Great Charter, and even the addition of new privileges, by the ſtatutes of Merton and of Marlebridge. But I

vations made at the ſame time on the ſituation of the people of France, needs only to compare the Great Charter, ſo extenſive in its proviſions, and in which the Barons ſtipulated in favour even of the Bondman, with the treaty concluded between Lewis the Eleventh, and ſeveral of the Princes and Peers of France, intitled, *A Treaty made at St. Maur, between the Dukes of Normandy, Calabre, Bretagne, Bourbonnois, Auvergne, Nemours; the Counts of Charolois, Armagnac, and St. Pol, and other Princes of France, riſen up in ſupport of the public good, of the one part; and King Lewis the Eleventh of the other, October* 29, 1465. In this Treaty, which was made in order to terminate a war which was called a war for the Public good, *(pro bono Publico)* no proviſion was made but concerning the particular power of a few Lords: not a word was inſerted in favour of the people. This treaty may be ſeen at large in the *pieces juſtificatives* annexed to the *Mémoires de Philippe de Comines.*

haſten to reach the grand epoch of the reign of Edward the Firſt; a Prince, who, from his numerous and prudent laws, has been denominated the Engliſh Juſtinian.

Poſſeſſed of great natural talents, and ſucceeding a Prince whoſe weakneſs and injuſtice had rendered his reign unhappy, Edward was ſenſible that nothing but a ſtrict adminiſtration of Juſtice could, on the one ſide, curb a Nobility whom the troubles of the preceding reign had rendered turbulent, and on the other, appeaſe and conciliate the people, by ſecuring the property of individuals. To this end, he made juriſprudence the principal object of his attention; and ſo much did it improve under his care, that the mode of proceſs became fixed and ſettled; Judge Hale going even ſo far as to affirm, that the Engliſh laws arrived at once, *& quaſi per ſaltum*, at perfection, and that there has been more improvement made in them during the *firſt* thirteen years of the reign of Edward, than all the ages ſince his time have done.

But what renders this æra particularly intereſting is, that it affords the firſt inſtance of the admiſſion of the Deputies of Towns and Boroughs into *(a)* Parliament.

(a) I mean their legal origin; for the Earl of Lei-

Edward, continually engaged in wars, either againſt Scotland or on the Continent, ſeeing moreover his demeſnes conſiderably diminiſhed, was frequently reduced to the moſt preſſing neceſſities. But though, in conſequence of the ſpirit of the times, he frequently indulged himſelf in particular acts of injuſtice, yet he perceived that it was impoſſible to extend a general oppreſſion over a body of Nobles, and a People, who ſo well knew how to unite in a common cauſe. In order to raiſe ſubſidies therefore, he was obliged to employ a new method, and to endeavour to obtain through the conſent of the People, what his Predeceſſors had hitherto expected from their own power. The Sheriffs were ordered to invite the Towns and Boroughs of the different Counties to ſend Deputies to Parliament; and it is from this æra that we are to date the origin of the Houſe of Commons *(a)*.

It muſt be confeſſed, however, that theſe Deputies of the People were not, at firſt, poſſeſſed of any conſiderable authority. They

ceſter, who had uſurped the power during part of the preceding reign, had called ſuch Deputies up to Parliament before.

(a) Anno 1295.

were far from enjoying thoſe extenſive privileges which, in theſe days, conſtitute the Houſe of Commons a collateral part of the Government: they were in thoſe times called up only to provide for the wants of the King, and approve of the reſolutions taken by him and the aſſembly of the Lords. *(a)* But it was nevertheleſs a great point gained, to have obtained the right of uttering their complaints, aſſembled in a Body and in a legal way—to have acquired, inſtead of the dangerous reſource of inſurrections, a lawful and regular mean of influencing the motions of the Government, and thenceforth to have become a part of it. Whatever diſadvantage might attend the ſtation at firſt allotted to the Repreſentatives of the People, it was ſoon to be compenſated by the preponderance the

(a) The end mentioned in the Summons ſent to the Lords, was, *de arduis negotiis regni tractaturi, & conſilium impenſuri:* the Summons ſent to the Commons was, *ad faciendum & conſentiendum.* The power enjoyed by the latter was even inferior to what they might have expected from the Summons ſent to them: "In moſt of the ancient Statutes they are not ſo much as named; and in "ſeveral, even when they are mentioned, they are diſtinguiſhed as petitioners merely, the Aſſent of the Lords "being expreſſed in contradiſtinction to the Requeſt of "the Commons." See on this ſubject the Preface to the Collection of the Statutes at large, by Ruffhead, and the authorities quoted therein.

People neceſſarily acquire, when they are enabled to act and move with method, and eſpecially with concert. (*a*)

And indeed this privilege of naming Repreſentatives, inſignificant as it might then appear, preſently manifeſted itſelf by the moſt conſiderable effects. In ſpite of his reluctance, and after many evaſions unworthy of ſo great a King, Edward was obliged to confirm the Great Charter; he even confirmed it eleven times in the courſe of his reign. It was moreover enacted, that whatever ſhould be done contrary to it, ſhould be null and void; that it ſhould be read twice a year in all Cathedrals; and that the penalty of excommunication ſhould be denounced againſt any one who ſhould preſume to violate it. (*b*)

(*a*) France had indeed alſo her Aſſemblies of the General Eſtates of the Kingdom, in the ſame manner as England had her Parliament; but then it was only the Deputies for the Towns within the particular domain of the Crown, that is, for a very ſmall part of the Nation, who, under the name of the *Third Eſtate*, were admitted in thoſe Eſtates; and it is eaſy to conceive that they acquired no great influence in an aſſembly of Sovereigns who gave the law to their Lord Paramount. Hence, when theſe diſappeared, the maxim became immediately eſtabliſhed, *The will of the King is the will of the Law*. In old French, *Qui veut le Roy, ſi veut le Loy*.

(*b*) Confirmationes Chartarum, cap. 2, 3, 4.

At length, he converted into an eſtabliſhed law a privilege of which rhe Engliſh had hitherto had only a precarious enjoyment; and, in the ſtatute *de Tallagio non concèdendo*, he decreed, that no tax ſhould be laid, nor impoſt levied, without the joint conſent of the Lords and Commons. *(a)* A moſt important Statute this, which, in conjunction with Magna Charta, forms the baſis of the Engliſh Conſtitution. If from the latter the Engliſh are to date the origin of their liberty, from the former they are to date the eſtabliſhment of it; and as the Great Charter was the bulwark that protected the freedom of individuals, ſo was the Statute in queſtion the engine which protected the Charter itſelf, and by the help of which the People were thenceforth to make legal conqueſts over the authority of the Crown.

This is the period at which we muſt ſtop, in order to take a diſtant view, and contemplate the different proſpect which the reſt of Europe then preſented.

(a) "Nullum tallagium vel auxilium, per nos, vel "hæredes noſtros, in regno noſtro ponatur ſeu levetur, "ſine voluntate & aſſenſu Archiepiſcoporum, Epiſcopo-"rum, Comitum, Baronum, Militum, Burgenſium, & "aliorum liberorum hom' de regno noſtro." Stat. An. 24 Ed. I.

The efficient cauſes of ſlavery were daily operating and gaining ſtrength. The independence of the Nobles on the one hand, the ignorance and weakneſs of the people on the other, were ſtill extreme: the feudal government ſtill continued to diffuſe oppreſſion and miſery; and ſuch was the confuſion of it, that it even took away all hopes of amendment.

France, ſtill bleeding from the extravagance of a Nobility inceſſantly engaged in groundleſs wars, either with each other, or with the King, was again deſolated by the tyranny of that ſame Nobility, haughtily jealous of their liberty, or rather of their anarchy. *(a)* The people, oppreſſed by thoſe who ought to have guided and protected them, loaded with inſults by thoſe who exiſted by their labour, revolted on all ſides. But their tumultuous inſurrections had ſcarcely any other object than that of giving vent to

(a) Not contented with oppreſſion, they added inſult. "When the Gentility," ſays Mezeray, "pillaged and "committed exactions on the peaſantry, they called "the poor ſufferer, in deriſion, *Jaques bonhomme* (Good-"man James). This gave riſe to a furious ſedition, "which was called the *Jaquerie*. It began at Beauvais "in the year 1357, extending itſelf into moſt of the Pro-"vinces of France, and was not appeaſed, but by the "deſtruction of part of thoſe unhappy victims, thou-"ſands of whom were ſlaughtered."

the anguiſh with which their hearts were full. They had no thoughts of entering into a general combination; ſtill leſs of changing the form of the Government, and laying a regular plan of public liberty.

Having never extended their views beyond the fields they cultivated, they had no conception of thoſe different ranks and orders of Men, of thoſe diſtinct and oppoſite privileges and prerogatives, which are all neceſſary ingredients of a free Conſtitution. Hitherto confined to the ſame round of ruſtic employments, they little thought of that complicated fabric, which the more informed themſelves cannot but with difficulty comprehend, when, by a concurrence of favourable circumſtances, the ſtructure has at length been reared, and ſtands diſplayed to their view.

In their ſimplicity, they ſaw no other remedy for the National evils, than the general eſtabliſhment of the regal power, that is, of the authority of one common uncontrouled Maſter, and only longed for that time, which, while it gratified their revenge, would mitigate their ſufferings, and reduce to the ſame level both the oppreſſors and the oppreſſed.

The Nobility, on the other hand, bent ſolely on the enjoyment of a momentary indepen-

dence, irrecoverably loſt the affection of the only Men who might in time ſupport them; and equally regardleſs of the dictates of humanity and of prudence, they did not perceive the gradual and continual advances of the royal authority, which was ſoon to overwhelm them all. Already were Normandy, Anjou, Languedoc, and Touraine, re-united to the Crown: Dauphiny, Champagne, and part of Guyenne, were ſoon to follow: France was doomed at length to ſee the reign of Lewis the Eleventh; to ſee her general Eſtates firſt become uſeleſs, and be afterwards aboliſhed.

It was the deſtiny of Spain alſo, to behold her ſeveral Kingdoms united under one Head: ſhe was fated to be in time ruled by Ferdinand and Charles the Fifth. (*a*) And Ger-

(*a*) Spain was originally divided into twelve Kingdoms, beſides Principalities, which by Treaties, and eſpecially by Conqueſts, were collected into three Kingdoms; thoſe of Caſtile, Aragon, and Granada. Ferdinand the Fifth, King of Aragon, married Iſabella, Queen of Caſtile; they made a joint Conqueſt of the Kingdom of Granada; and theſe three Kingdoms, thus united, deſcended, in 1516, to their grandſon Charles, and formed the Spaniſh Monarchy. At this æra, the Kings of Spain began to be abſolute; and the States of the Kingdoms of Caſtile and Leon, "aſſembled at Toledo, in the month "of November 1539, were the laſt in which the three "orders met, that is, the Grandees, the Eccleſiaſtics,

many, where an elective Crown prevented the *re-unions*, *(a)* was indeed to acquire a few free Cities; but her people, parcelled into ſo many different dominions, were deſtined to remain ſubject to the arbitrary yoke of ſuch of her different Sovereigns as ſhould be able to maintain their power and independence. In a word, the feudal tyranny which overſpread the Continent, did not compenſate, by any preparation of diſtant advantages, the preſent calamities it cauſed; nor was it to leave behind it, as it diſappeared, any thing but a more regular kind of Deſpotiſm.

" and the Deputies of the Towns." *See Ferrera's general Hiſtory of Spain.*

(a) The Kingdom of France, as it ſtood under Hugh Capet and his next Succeſſors, may, with a great degree of exactneſs, be compared with the German Empire, as it exiſts at preſent, and alſo exiſted at that time: but the Imperial Crown of Germany having, through a conjunction of circumſtances, continued elective, the German Emperors, though veſted with more high-ſounding prerogatives than even the Kings of France, laboured under very eſſential diſadvantages: they could not purſue a plan of aggrandiſement with the ſame ſteadineſs as a line of hereditary Sovereigns uſually do; and the right to elect them, enjoyed by the greater Princes of Germany, procured them a ſufficient power to protect themſelves, as well as the leſſer Lords, againſt the power of the Crown.

But in England, the ſame feudal ſyſtem, after having ſuddenly broken in like a flood, had depoſited, and ſtill continued to depoſit, the noble ſeeds of the ſpirit of liberty, union, and ſober reſiſtance. So early as the times of Edward, the tide was ſeen gradually to ſubſide; the laws which protect the perſon and property of the individual, began to make their appearance; that admirable Conſtitution, the reſult of a threefold power, inſenſibly aroſe; *(a)* and the eye might even then diſcover the verdant ſummits of that fortunate region, which was deſtined to be the ſeat of Philoſophy and Liberty, which are inſeparable companions.

(a) "Now, in my opinion," ſays Philipe de Comines, in times not much poſterior to thoſe of Edward the Firſt, and with the ſimplicity of the language of his times, "among all the Sovereignties I know in the "world, that in which the public good is beſt attended "to, and the leaſt violence exerciſed on the people, is "that of England." *Mémoires de Comines*, tom. I. lib. v. chap. xix.

CHAPTER III.

The Subject continued.

THE Repreſentatives of the Nation, and of the whole Nation, were now admitted into Parliament: the great point therefore was gained, that was one day to procure them the great influence which they at preſent poſſeſs; and the ſubſequent reigns afford continual inſtances of its ſucceſſive growth.

Under Edward the Second, the Commons began to annex petitions to the bills by which they granted ſubſidies: this was the dawn of their legiſlative authority. Under Edward the Third, they declared they would not, in future, acknowledge any law to which they had not expreſsly aſſented. Soon after this, they exerted a privilege in which conſiſts, at this time, one of the great balances of the Conſtitution: they impeached, and procured to be condemned, ſome of the firſt Miniſters of State. Under Henry the Fourth, they refuſed to grant ſubſidies before an anſwer had been given to their petitions. In a word, every event of any conſequence was attended with an increaſe of the power of the Commons; increaſes indeed but

ſlow and gradual, but which were peaceably and legally effected, and were the more fit to engage the attention of the People, and coaleſce with the ancient principles of the Conſtitution.

Under Henry the Fifth, the Nation was intirely taken up with its wars againſt France; and in the reign of Henry the Sixth began the fatal conteſts between the houſes of York and Lancaſter. The noiſe of arms alone was now to be heard: during the ſilence of the laws already in being, no thought was had of enacting new ones; and for thirty years together, England preſents a wide ſcene of ſlaughter and deſolation.

At length, under Henry the Seventh, who, by his intermarriage with the houſe of York, united the pretenſions of the two families, a general peace was re-eſtabliſhed, and the proſpect of happier days ſeemed to open on the Nation. But the long and violent agitation, under which it had laboured, was to be followed by a long and painful recovery. Henry, mounting the throne with ſword in hand, and in great meaſure as a Conqueror, had promiſes to fulfil, as well as injuries to avenge. In the mean time, the People, wearied out by the calamities they had undergone, and longing only

for repoſe, abhorred even the idea of reſiſtance; and the remains of an almoſt exterminated Nobility thus beheld themſelves left defenceleſs, and abandoned to the mercy of the Sovereign.

The Commons, on the other hand, accuſtomed to act only a ſecond part in public affairs, and finding themſelves bereft of thoſe who hitherto had been their Leaders, were more than ever afraid to form, of themſelves, an oppoſition. Placed immediately, as well as the Lords, under the eye of the King, they beheld themſelves expoſed to the ſame dangers. Like them, therefore, they purchaſed their perſonal ſecurity at the expence of public liberty; and reading the hiſtory of the two firſt Kings of the houſe of Tudor, we imagine ourſelves reading the relation given by Tacitus, of Tiberius and the Roman Senate. (*a*)

The time, therefore, ſeemed to be arrived, at which England muſt ſubmit, in its turn, to the fate of the other Nations of Europe. All thoſe barriers which it had raiſed for the defence of its liberty, ſeemed to have only been able to poſtpone the inevitable effects of Power.

(*a*) *Quanto quis illuſtrior, tanto magis falſi ac feſtinantes.*

But the remembrance of their ancient laws, of that great Charter ſo often and ſo ſolemnly confirmed, was too deeply impreſſed on the minds of the Engliſh, to be effaced by tranſitory evils. Like a deep and extenſive ocean, which preſerves an equability of temperature amidſt all the viciſſitudes of ſeaſons, England ſtill retained thoſe principles of liberty which were ſo univerſally diffuſed through all orders of the People, and they required only a proper opportunity to manifeſt themſelves.

England, beſides, ſtill continued to poſſeſs the immenſe advantage of being one undivided State.

Had it been, like France, divided into ſeveral diſtinct dominions, it would alſo have had ſeveral National Aſſemblies. Theſe Aſſemblies, being convened at different times and places, for this and other reaſons, never could have acted in concert; and the power of withholding ſubſidies, a power ſo important when it is that of diſabling the Sovereign and binding him down to inaction, would then have only been the deſtructive privilege of irritating a Maſter who would have eaſily found means to obtain ſupplies from other quarters.

The different Parliaments or Aſſemblies of theſe ſeveral States, having thenceforth no

means of recommending themſelves to their Sovereign but their forwardneſs in complying with his demands, would have vied with each other in granting what it would not only have been fruitleſs, but even highly dangerous, to refuſe. The King would not have failed ſoon to demand, as a tribute, a gift he muſt have been confident to obtain; and the outward form of conſent would have been left to the People only as an additional means of oppreſſing them without danger.

But the King of England continued, even in the time of the Tudors, to have but one Aſſembly before which he could lay his wants, and apply for relief. How great ſoever the increaſe of his power was, a ſingle Parliament alone could furniſh him with the means of exerciſing it; and whether it was that the members of this Parliament entertained a deep ſenſe of their advantages, or whether private intereſt exerted itſelf in aid of patriotiſm, they at all times vindicated the right of granting, or rather refuſing, ſubſidies; and, amidſt the general wreck of every thing they ought to have held dear, they at leaſt clung obſtinately to the plank which was deſtined to prove the inſtrument of their preſervation.

Under Edward the Sixth, the abſurd tyrannical laws againſt High Treaſon, inſtituted under Henry the Eighth, his predeceſſor, were aboliſhed. But this young and virtuous Prince having ſoon paſſed away, the blood-thirſty Mary aſtoniſhed the world with cruelties, which nothing but the fanaticiſm of a part of her ſubjects could have enabled her to execute.

Under the long and brilliant reign of Elizabeth, England began to breathe anew; and the Proteſtant religion, being ſeated once more on the throne, brought with it ſome more freedom and toleration.

The Star-Chamber, that effectual inſtrument of the tyranny of the two Henries, yet continued to ſubſiſt; the inquiſitorial tribunal of the High Commiſſion was even inſtituted; and the yoke of arbitrary power lay ſtill heavy on the ſubject. But the general affection of the people for a Queen whoſe former misfortunes had created ſuch a general concern, the imminent dangers which England eſcaped, and the extreme glory attending that reign, leſſened the ſenſe of ſuch exertions of authority as would, in theſe days, appear the height of Tyranny, and ſerved at that time to juſtify, as they ſtill do excuſe, a Princeſs

whoſe great talents, though not her principles of government, render her worthy of being ranked among the greateſt Sovereigns.

Under the reign of the Stuarts, the Nation began to recover from its long lethargy. James the Firſt, a Prince rather imprudent than tyrannical, drew back the veil which had hitherto diſguiſed ſo many uſurpations, and made an oſtentatious diſplay of what his predeceſſors had been contented to enjoy.

He was inceſſantly aſſerting, that the authority of Kings was not to be controuled, any more than that of God himſelf. Like Him, they were omnipotent; and thoſe privileges to which the People ſo clamorouſly laid claim, as their inheritance and birthright, were no more than an effect of the grace and toleration of his royal anceſtors (*a*).

Thoſe principles, hitherto only ſilently adopted in the Cabinet, and in the Courts of Juſtice, had maintained their ground in conſequence of this very obſcurity. Being now announced from the Throne, and reſounded

(a) See his Declaration made in Parliament, in the years 1610 and 1621.

from the pulpit, they ſpread an univerſal alarm. Commerce, beſides, with its attendant arts, and above all that of printing, diffuſed more ſalutary notions throughout all orders of the people; a new light began to riſe upon the Nation; and that ſpirit of oppoſition frequently diſplayed itſelf in this reign, to which the Engliſh Monarchs had not, for a long time paſt, been accuſtomed.

But the ſtorm, which was only gathering in clouds during the reign of James, began to mutter under Charles the Firſt, his ſucceſſor; and the ſcene which opened to view, on the acceſſion of that Prince, preſented the moſt formidable aſpect.

The notions of religion, by a ſingular concurrence, united with the love of liberty: the ſame ſpirit which had made an attack on the eſtabliſhed faith, now directed itſelf to politics: the royal prerogatives were brought under the ſame examination as the doctrines of the Church of Rome had been ſubmitted to; and as a ſuperſtitious religion had proved unable to ſupport the teſt, ſo neither could an authority pretended to be unlimited be expected to bear it.

The Commons, on the other hand, were recovering from the aſtoniſhment into which

the extinction of the power of the Nobles had, at firſt, thrown them. Taking a view of the ſtate of the Nation, and of their own, they became ſenſible of their whole ſtrength; they determined to make uſe of it, and to repreſs a power which ſeemed, for ſo long a time, to have levelled every barrier. Finding among themſelves Men of the greateſt capacity, they undertook that important taſk with method and by conſtitutional means; and Charles had thus to cope with a whole Nation put in motion and directed by an aſſembly of Stateſmen.

And here we muſt obſerve how different were the effects produced in England, by the annihilation of the power of the Nobility, from thoſe which the ſame event had produced in France.

In France, where, in conſequence of the diviſion of the People and of the exorbitant power of the Nobles, the people were accounted nothing,---when the Nobles themſelves were ſuppreſſed, the work was compleated.

In England, on the contrary, where the Nobles ever vindicated the rights of the People equally with their own,—in England, where the People had ſucceſſively acquired

moſt effectual means of influencing the motions of the Government, and above all were undivided, when the Nobles themſelves were caſt to the ground, the body of the People ſtood firm, and maintained the public liberty.

The unfortunate Charles, however, was totally ignorant of the dangers which ſurrounded him. Seduced by the example of the other Sovereigns of Europe, he was not aware how different, in reality, his ſituation was from theirs: he had the imprudence to exert with rigour an authority which he had no ultimate reſources to ſupport: an union was at laſt effected in the Nation; and he ſaw his enervated prerogatives diſſipated with a breath (*a*). By the famous Act, called the Petition of

(*a*) It might here be objected, that when, under Charles the Firſt, the regal power was obliged to ſubmit to the power of the People, the King poſſeſſed other dominions beſides England, viz. Scotland and Ireland, and therefore ſeemed to enjoy the ſame advantage as the Kings of France, that of reigning over a divided Empire or Nation. But, to this it is to be anſwered, that, at the time we mention, Ireland, ſcarcely civilized, only increaſed the neceſſities, and conſequently the dependance, of the King; while Scotland, through

Right, and another poſterior Act, to both which he aſſented, the compulſory loans and taxes, diſguiſed under the name of *Benevolences*, were declared to be contrary to law; arbitrary impriſonments, and the exerciſe of the martial law, were aboliſhed; the Court of High Commiſſion, and the Star-Chamber, were ſuppreſſed (*a*); and the Conſtitution, freed from the apparatus of deſpotic powers with which

the conjunction of ſome peculiar circumſtances, had thrown off her obedience. And though thoſe two States, even at preſent, bear no proportion to the compact body of the Kingdom of England, and ſeem never to have been able, by their union with it, to procure to the King any dangerous reſources, yet the circumſtances which took place in both at the time of the Revolution, or ſince, ſufficiently prove that it was no unfavourable circumſtance to Engliſh liberty, that the great criſis of the reign of Charles the Firſt, and the great advance which the Conſtitution was to make at that time, ſhould precede the period at which the King of England might have been able to call in the aſſiſtance of two other Kingdoms.

(*a*) The Star-chamber differed from all the other Courts of Law in this: the latter was governed only by the common law, or immemorial cuſtom, and Acts of Parliament; whereas the former often admitted for law the proclamations of the King in Council, and grounded its judgments upon them. The abolition of this Tribunal, therefore, was juſtly looked upon as a great victory over regal Authority.

the Tudors had obſcured it, was reſtored to its antient luſtre. Happy had been the People, if their Leaders, after having executed ſo noble a work, had contented themſelves with the glory of being the benefactors of their country. Happy had been the King, if, obliged at laſt to ſubmit, his ſubmiſſion had been ſincere, and if he had become ſufficiently ſenſible, that the only reſource he had left was the affection of his ſubjects.

But Charles knew not how to ſurvive the loſs of a power he had conceived to be indiſputable: he could not reconcile himſelf to limitations and reſtraints ſo injurious, according to his notions, to ſovereign authority. His diſcourſe and conduct betrayed his ſecret deſigns; diſtruſt took poſſeſſion of the Nation; certain ambitious perſons availed themſelves of it to promote their own views; and the ſtorm, which ſeemed to have blown over, burſt forth anew. The contending fanaticiſm of perſecuting Sects, joined in the conflict between regal haughtineſs and the ambition of individuals; the tempeſt blew from every point of the compaſs; the Conſtitution was rent aſunder, and Charles exhibited in his fall an awful example to the Univerſe.

The Royal power being thus annihilated, the Engliſh made fruitleſs attempts to ſubſtitute a republican Government in its ſtead. "It was a curious ſpectacle," ſays Monteſquieu, "to behold the vain efforts of the Engliſh to "eſtabliſh among themſelves a Democracy." Subjected, at firſt, to the power of the principal Leaders in the Long Parliament, they ſaw that power expire, only to paſs, without bounds, into the hands of a Protector. They ſaw it afterwards parcelled out among the Chiefs of different bodies of troops; and thus ſhifting without end from one kind of ſubjection to another, they were at length convinced, that no attempt to eſtabliſh liberty in a great Nation, by making the people interfere in the common buſineſs of Government, is of all attempts the moſt chimerical; that the authority *of all*, with which Men are amuſed, is in reality no more than the authority of a few powerful individuals who divide the Republic among themſelves; and they at laſt reſted in the boſom of the only Conſtitution which is fit for a great State and a free People; I mean that in which a choſen number deliberate, and a ſingle perſon executes; but in which, at the ſame time, the public ſatisfaction

is rendered, by the general relation and arrangement of things, a neceſſary condition of the duration of Government.

Charles the Second, therefore, was called over; and he experienced, on the part of the people, that enthuſiaſm of affection which uſually attends the return from a long alienation. He could not however bring himſelf to forgive them the inexpiable crime of which he looked upon them to have been guilty. He ſaw with the deepeſt concern that they ſtill entertained their former notions with regard to the nature of the royal prerogative; and, bent upon the recovery of the ancient powers of the Crown, he only waited for an opportunity to break thoſe promiſes which had procured his reſtoration.

But the very eagerneſs of his meaſures fruſtrated their ſucceſs. His dangerous alliances on the Continent, and the extravagant wars in which he involved England, joined to the frequent abuſe he made of his authority, betrayed his deſigns. The eyes of the Nation were ſoon opened, and ſaw into his projects; when, convinced at length that nothing but fixed and irreſiſtible bounds can be an effectual check on the views and efforts of Power, they reſolved

finally to take away thoſe remnants of deſpotiſm which ſtill made a part of the regal prerogative.

The military ſervices due to the Crown, the remains of the ancient feudal tenures, had been already aboliſhed: the laws againſt heretics were now repealed; the Statute for holding parliaments once at leaſt in three years was enacted; the *Habeas Corpus* Act, that barrier of the Subject, was eſtabliſhed; and, ſuch was the patriotiſm of the Parliaments, that it was under a King the moſt deſtitute of principle, that liberty received its moſt efficacious ſupports.

At length, on the death of Charles, began a reign which affords a moſt exemplary leſſon both to Kings and People. James the Second, a prince of a more rigid diſpoſition, though of a leſs comprehenſive underſtanding, than his late brother, purſued ſtill more openly the project which had already proved ſo fatal to his family. He would not ſee that the great alterations which had ſucceſſively been effected in the Conſtitution, rendered the execution of it daily more and more impracticable: he imprudently ſuffered himſelf to be exaſperated at a reſiſtance he was in no condition to overcome;

and, hurried away by a ſpirit of deſpotiſm and a monkiſh zeal, he ran headlong againſt the rock which was to wreck his authority.

He not only uſed, in his declarations, the alarming expreſſions of Abſolute Power and Unlimited Obedience—he not only uſurped to himſelf a right to diſpenſe with the laws; but moreover ſought to convert that deſtructive pretenſion to the deſtruction of thoſe very laws which were held moſt dear by the Nation, by endeavouring to aboliſh a religion for which they had ſuffered the greateſt calamities, in order to eſtabliſh on its ruins a mode of faith which repeated Acts of the Legiſlature had proſcribed; and proſcribed, not becauſe it tended to eſtabliſh in England the doctrines of Tranſubſtantiation and Purgatory, doctrines in themſelves of no political moment, but becauſe the unlimited power of the Sovereign had always been made one of its principal tenets.

To endeavour therefore to revive ſuch a Religion, was not only a violation of the laws, but was, by one enormous violation, to pave the way for others of a ſtill more alarming nature. Hence the Engliſh, ſeeing that their liberty was attacked even in its firſt principles, had recourſe to that remedy which reaſon and na-

ture point out to the People, when he who ought to be the guardian of the laws becomes their deſtroyer: they withdrew the allegiance which they had ſworn to James, and thought themſelves abſolved from their oath to a King who himſelf diſregarded the oath he had made to his People.

But, inſtead of a revolution like that which dethroned Charles the Firſt, which was effected by a great effuſion of blood, and threw the ſtate into a general and terrible convulſion, the dethronement of James proved a matter of ſhort and eaſy operation. In conſequence of the progreſſive information of the People, and the certainty of the principles which now directed the Nation, the whole were unanimous. All the ties by which the People were bound to the throne, were broken, as it were, by one ſingle ſhock; and James, who, the moment before, was a Monarch ſurrounded by ſubjects, became at once a ſimple individual in the midſt of the Nation.

That which contributes, above all, to diſtinguiſh this event as ſingular in the annals of Mankind, is the moderation, I may even ſay, the legality which accompanied it. As if to dethrone a King who ſought to ſet himſelf

above the Laws, had been a natural conſequence of, and provided for by, the principles of Government, every thing remained in its place; the Throne was declared vacant, and a new line of ſucceſſion was eſtabliſhed.

Nor was this all; care was had to repair the breaches that had been made in the Conſtitution, as well as to prevent new ones; and advantage was taken of the rare opportunity of entering into an original and expreſs compact between King and People.

An Oath was required of the new King, more preciſe than had been taken by his predeceſſors; and it was conſecrated as a perpetual formula of ſuch oaths. It was determined, that to impoſe taxes without the conſent of Parliament, as well as to keep up a ſtanding army in time of peace, are contrary to law. The power which the Crown had conſtantly claimed, of diſpenſing with the laws, was aboliſhed. It was enacted, that the ſubject, of whatever rank or degree, had a right to preſent petitions to the King. (*a*) Laſtly,

(*a*) The Lords and Commons, previous to the Coronation of King William and Queen Mary, had framed a Bill which contained a declaration of the rights which they claimed in behalf of the People, and was in con-

the key-ſtone was put to the arch, by the final eſtabliſhment of the Liberty of the Preſs (*a*).

The Revolution of 1689 is therefore the third grand æra in the hiſtory of the Conſtitution of England. The great Charter had marked out the limits within which the Royal authority ought to be confined; a few outworks were raiſed in the reign of Edward the Firſt; but it was at the Revolution that the circumvallation was compleated.

It was at this æra, that the true principles of civil ſociety were fully eſtabliſhed. By the expulſion of a King who had violated his oath, the doctrine of Reſiſtance, that ultimate reſource of an oppreſſed People, was confirmed beyond a doubt. By the excluſion given to a

ſequence called the *Bill of Rights*. This Bill contained the Articles above, as well as ſome others, and having received afterwards the Royal aſſent, became an Act of Parliament, under the title of *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown*.—A. 1 William and Mary, Seſſ. 2. Cap. 2.

(*a*) The liberty of the preſs was, properly ſpeaking, eſtabliſhed only four years afterwards, in conſequence of the refuſal which the Parliament made at that time to continue any longer the reſtrictions which had before been ſet upon it.

family hereditarily deſpotic, it was finally determined, that Nations are not the property of Kings. The principles of Paſſive Obedience, the Divine and indefeaſible Right of Kings, in a word, the whole ſcaffolding of falſe and ſuperſtitious notions, by which the Royal authority had till then been ſupported, fell to the ground; and in the room of it were ſubſtituted the more ſolid and durable foundations of the love of order, and a ſenſe of the neceſſity of civil government among Mankind.

CHAPTER III.

Of the Legiſlative Power.

IN almoſt all the States of Europe, the will of the Prince holds the place of law; and cuſtom has ſo confounded the matter of right with the matter of fact, that their Lawyers generally repreſent the legiſlative authority as eſſentially attached to the character of King; and the plenitude of his power ſeems to them neceſſarily to flow from the very definition of his title.

The Engliſh, placed in more favourable circumſtances, have judged differently: they could not believe that the deſtiny of Mankind ought to depend on a play of words, and on ſcholaſtic ſubtilties; they have therefore annexed no other idea to the word *King*, or *Roy*, a word known alſo to their laws, than that which the Latins annexed to the word *Rex*, and the northern Nations to that of *Cyning*.

In limiting therefore the power of their King, they have acted more conſiſtently with the etymology of the word; they have acted alſo more conſiſtently with reaſon, in not leaving the laws to the diſpoſal of the perſon who is already inveſted with the public power of the State, that is, of him who, of all men, is moſt tempted to ſet himſelf above them.

The baſis of the Engliſh Conſtitution, the capital principle on which all others depend, is that the Legiſlative power belongs to Parliament alone; that is to ſay, the power of eſtabliſhing laws, and of abrogating, changing, or explaining them.

The conſtituent parts of Parliament are the King, the Houſe of Lords, and the Houſe of Commons.

The Houſe of Commons, otherwiſe the Aſſembly of the Repreſentatives of the Nation,

is compoſed of the Deputies of the different Counties, each of which ſends two; of the Deputies of certain Towns, of which London, including Weſtminſter and Southwark, ſends eight,—other Towns, two or one; and of the Deputies of the Univerſities of Oxford and Cambridge, each of which ſends two.

Laſtly, ſince the Act of Union, Scotland ſends forty-five Deputies; who, added to thoſe juſt mentioned, make up the whole number of five hundred and fifty-eight. Thoſe Deputies, though ſeparately elected, do not ſolely repreſent the Town or County that ſends them, as is the caſe with the Deputies of the United Provinces of the Netherlands, or of the Swiſs Cantons; but, when they are once admitted, they repreſent the whole body of the Nation.

The qualifications required for being a Member of the Houſe of Commons are, for repreſenting a County, to be born a ſubject of Great Britain, and to be poſſeſſed of a landed eſtate of ſix hundred pounds a year; and of three hundred, for repreſenting a Town, or Borough.

The qualifications required for being an elector in a County, are, to be poſſeſſed, in that County, of a Freehold of forty ſhillings

a year. (*a*) With regard to electors in Towns or Boroughs, they muſt be Freemen of them; a word which now ſignifies certain qualifications expreſſed in the particular Charters.

When the King has determined to aſſemble a Parliament, he ſends an order for that purpoſe to the Lord Chancellor, who, after receiving the ſame, ſends a writ under the great ſeal of England to the Sheriff of every County, directing him to take the neceſſary ſteps for the election of Members for the County, and the Towns and Boroughs contained in it. Three days after the reception of the writ, the Sheriff muſt, in his turn, ſend his precept to the Magiſtrates of the Towns and Boroughs, to order them to make their election within eight days after the reception of the precept, giving four days notice of the ſame. And the Sheriff himſelf muſt proceed to the election for the County, not ſooner than ten days after the receipt of the writ, nor later than ſixteen.

The principal precautions taken by the law, to inſure the freedom of elections, are,

(*a*) This Freehold muſt have been poſſeſſed by the elector one whole year at leaſt before the time of election, except it has devolved to him by inheritance, by marriage, by a laſt will, or by a promotion to an office.

that any Candidate, who after the date of the writ, or even after the vacancy, ſhall have given entertainments to the electors of a place, or to any of them, in order to his being elected, ſhall be incapable of ſerving for that place in Parliament. That if any perſon gives, or promiſes to give, any money, employment, or reward, to any voter, in order to influence his vote, he, as well as the voter himſelf, ſhall be condemned to pay a fine of five hundred pounds, and for ever diſqualified to vote and hold any office in any corporation; the faculty however being reſerved to both, of procuring their indemnity for their own offence, by diſcovering ſome other offender of the ſame kind.

It has been moreover eſtabliſhed, that no Lord of Parliament, or Lord Lieutenant of a County, has any right to interfere in the elections of members; that any officer of the exciſe, cuſtoms, &c. who ſhall preſume to intermeddle in elections, by influencing any voter to give or withhold his vote, ſhall forfeit one hundred pounds, and be diſabled to hold any office. Laſtly, all ſoldiers quartered in a place where an election is to be made, muſt move from it, at leaſt one day before the election, to the diſtance of two miles or more, and re-

turn not till one day after the election is finiſhed.

The Houſe of Peers, or Lords, is compoſed of the Lords Spiritual, who are the archbiſhops of Canterbury and of York, and the twenty-four Biſhops; and of the Lords temporal, whatever may be their reſpective titles, ſuch as Dukes, Marquiſes, Earls, &c.

Laſtly, the King is the third conſtitutive part of Parliament; it is even he alone who can convoke it; and he alone can diſſolve, or prorogue it. The effect of a diſſolution is, that from that moment the Parliament completely ceaſes to exiſt; the commiſſion given to the Members by their Conſtituents is at an end; and whenever a new meeting of Parliament ſhall happen, they muſt be elected anew. A prorogation is an adjournment to a term appointed by the King; till which the exiſtence of Parliament is ſimply interrupted, and the function of the Deputies ſuſpended.

When the Parliament meets, whether it be in virtue of a new ſummons, or whether, being compoſed of Members formerly elected, it meets again at the expiration of the term for which it was prorogued, the King either goes to it in perſon, inveſted with the inſignia of his dignity, or appoints proper perſons to

repreſent him on that occaſion, and opens the ſeſſion by laying before the Parliament the ſtate of the public affairs, and inviting them to take them into conſideration. This preſence of the King, either real or repreſented, is abſolutely requiſite at a firſt meeting; it is that which gives life to the Legiſtive Bodies, and puts them in action.

The King, having concluded his declaration, withdraws. The Parliament, which then is legally intruſted with the care of the National concerns, enters upon its functions, and continues to exiſt till it is prorogued, or diſſolved. The Houſe of Commons, and that of Peers, aſſemble ſeparately: the former, under the preſidence of the Lord Chancellor; the latter, under that of their Speaker: and both ſeparately adjourn to ſuch days as they reſpectively think proper to appoint.

As each of the two Houſes has a negative on the propoſitions made by the other, and there is, conſequently, no danger of their encroaching on each other's rights, nor on thoſe of the King, who has likewiſe his negative upon them both, any queſtion judged by them conducive to the public good, without exception, may be made the ſubject of their reſpec-

tive deliberations. Such are, for inſtance, new limitations or extenſions to be given to the authority of the King; the eſtabliſhing of new laws, or making changes in thoſe already in being. Laſtly, the different kinds of public proviſions, or eſtabliſhments, the various abuſes of adminiſtration, and their remedies, become, in every Seſſion, the object of the attention of Parliament.

Here, however, an important obſervation muſt be made. All Bills for granting Money muſt have their beginning in the Houſe of Commons: the Lords cannot take this object into their conſideration but in conſequence of a bill preſented to them by the latter; and the Commons have at all times been ſo anxiouſly tenacious of this privilege, that they never ſuffered the Lords even to make any change in the Money Bills which they have ſent to them, but they muſt ſimply and ſolely either accept or reject them.

This excepted, every Member in each Houſe may propoſe whatever queſtion he thinks proper. If, after being conſidered, the matter is found to deſerve attention, the perſon who made the propoſition, uſually with ſome others adjoined to him, is deſired to ſet it down in writing. If, after a more complete diſcuſſion, the

propoſition is carried in the affirmative, it is ſent to the other Houſe, that they may, in their turn, take it into conſideration. If the other Houſe reject the Bill, it remains without any effect: if they agree to it, nothing remains wanting to its complete eſtabliſhment, but the Royal Aſſent.

When there is no buſineſs that requires immediate diſpatch, the King uſually waits till the end of the Seſſion, or at leaſt till a certain number of bills are ready for him, before he declares his Royal pleaſure. When the time is come, the King goes to Parliament in the ſame ſtate with which he opened it; and while he is ſeated on the Throne, a Clerk, who has a liſt of the Bills, gives or refuſes, as he reads, the Royal Aſſent.

When the Royal Aſſent is given to a public Bill, the Clerk ſays, *le Roy le veut.* If the bill be a private Bill, he ſays, *ſoit fait comme il eſt déſiré.* If the Bill has ſubſidies for its object, he ſays, *le Roy remercie ſes loyaux Subjects, accepte leur bénévolence, & auſſi le veut.* Laſtly, if the King does not think proper to aſſent to the Bill, the Clerk ſays, *le Roy s'adviſera*; which is a mild way of giving a refuſal.

It is, however, pretty ſingular, that the King of England ſhould expreſs himſelf in

French in his Parliament. This cuſtom was introduced at the Conqueſt (*a*), and has been continued, like other matters of form, which ſometimes ſubſiſt for ages after the ſubſtance has been altered; and Judge Blackſtone expreſſes himſelf, on this ſubject, in the following words. "A badge, it muſt be owned, "(now the only one remaining) of Conqueſt; "and which one would wiſh to ſee fall into total "oblivion, unleſs it be reſerved as a ſolemn "memento to remind us that our liberties are "mortal, having once been deſtroyed by a foreign force."

When the King has declared his different intentions, he prorogues the Parliament. Thoſe Bills which he has rejected, remain without force: thoſe to which he has aſſented, become the expreſſion of the will of the higheſt power acknowledged in England: they have the ſame binding force as the *Edits enrégiſtrés* have

(*a*) William the Conqueror added to the other changes he introduced, the abolition of the Engliſh language in all public, as well as judicial, tranſactions, and ſubſtituted to it the French that was ſpoke in his time: hence the number of old French words that are met with in the ſtyle of the Engliſh laws. It was only under Edward III. that the Engliſh language began to be re-eſtabliſhed in the Courts of Juſtice.

in France, (*a*) and as the *Populiſcita* had in ancient Rome: in a word, they are LAWS. And, though each of the conſtituent parts of the Parliament might, at firſt, have prevented the exiſtence of thoſe laws, the united will of all the three is now neceſſary to repeal them.

(*a*) They call in France, *Edits enrégiſtrés*, thoſe Edicts of the King which have been regiſtered in the Court of Parliament. The word Parliament does not however expreſs in France, as it does in England, the Aſſembly of the Eſtates of the Kingdom. The French *Parlemens* are only Courts of Juſtice: that of Paris, which has the ſuperintendence over all thoſe eſtabliſhed in the Provinces, was inſtituted in the ſame manner, and for the ſame purpoſes, as the *Aula Regis* was afterwards in England, viz. for the adminiſtration of public Juſtice, and for deciding the differences between the King and his Barons: it was in conſequence of the Judgments by that Court paſſed, that the King proceeded to ſeize the dominions of the ſeveral Lords or Princes, and when he was able to effect this, united them to the Crown. The *Parliament* of Paris, as do the other Courts of Law, ground its judgments upon the *Edits* or *Ordonnances* of the King, when it has once regiſtered them. When thoſe *Ordonnances* are looked upon as grievous to the Subject, the Parliament refuſes to regiſter them: but this they do not from any pretenſion they have to a ſhare in the Legiſlative authority; they only object that they are not ſatisfied that the *Ordonnance* before them is really the will of the King, and then proceed to make remonſtrances againſt it: ſometimes the King defers to theſe; or, if he is reſolved to put an end to all oppoſition, he comes in perſon into the *Parliament*, there holds what they call *un*

CHAP. IV.

Of the Executive Power.

WHEN the Parliament is prorogued or diſſolved, it ceaſes to exiſt; but its laws ſtill continue to be in force: the King remains charged with the execution of them, and is ſupplied with the neceſſary power for that purpoſe.

It is however to be obſerved that, though in his political capacity of one of the conſtituent parts of the Parliament, that is, with regard to the ſhare allotted to him of the legiſlative authority, the King is undoubtedly Sovereign, and only needs alledge his will when he gives or refuſes his aſſent to the bills preſented to him; yet, in the exerciſe of his powers of Government, he is no more than a Magiſtrate, and the laws, whether thoſe that exiſted before him, or thoſe to which, by his aſſent, he has given being, muſt direct his conduct, and bind him equally with his ſubjects.

Lit de Juſtice, declares that the *Ordonnance* before them is actually his will, and orders the proper Officer to regiſter it.

The firſt prerogative of the King, in his capacity of Supreme Magiſtrate, has for its object the adminiſtration of Juſtice.

1°. He is the ſource of all judicial power in the State; he is the Chief of all the Courts of Law, and the Judges are only his ſubſtitutes; every thing is tranſacted in his name; the Judgments muſt be with his Seal, and are executed by his Officers.

2°. By a fiction of the law, he is looked upon as the univerſal proprietor of the kingdom; he is in conſequence deemed directly concerned in all offences; and for that reaſon proſecutions are to be carried on his name in the Courts of law.

3°. He can pardon offences, that is, remit the puniſhment that has been awarded in conſequence of his proſecution.

II. The ſecond prerogative of the King is, to be the *fountain of honour*, that is, the diſtributor of titles and dignities: he creates the Peers of the realm, as well as beſtows the different degrees of inferior Nobility. He moreover diſpoſes of the different offices, either in the Courts of law, or elſewhere.

III. The King is the ſuperintendent of Commerce; he has the prerogative of regulating weights and meaſures; he alone can coin money, and can give a currency to foreign coin.

IV. He is the Supreme head of the Church. In this capacity, he appoints the Biſhops, and the two Archbiſhops; and he alone can convene the Aſſembly of the Clergy. This Aſſembly is formed, in England, on the model of the Parliament: the Biſhops form the upper Houſe; Deputies from the Dioceſes, and from the ſeveral Chapters, form the lower Houſe: the aſſent of the King is likewiſe neceſſary to the validity of their Acts, or Canons; and the King can prorogue, or diſſolve, the Convocation.

V. He is, in right of his Crown, the Generaliſſimo of all ſea or land forces whatever; he alone can levy troops, equip fleets, build fortreſſes, and fills all the poſts in them.

VI. He is, with regard to foreign Nations, the repreſentative, and the depoſitary, of all the power and collective majeſty of the Nation; he ſends and receives ambaſſadors; he contracts alliances; and has the prerogative of declaring war, and of making peace, on whatever conditions he thinks proper.

VII. In fine, what ſeems to carry ſo many powers to the height, is its being a fundamental maxim, that THE KING CAN DO NO WRONG: which does not ſignify, however, that the King has not the power of doing ill, or, as it was pretended by certain perſons in more ancient

times, that every thing he did was lawful; but that he is above the reach of all Courts of law whatever, and that his perſon is ſacred and inviolable.

CHAP. V.

The Boundaries which the Conſtitution has ſet to the Royal Prerogative.

IN reading the foregoing enumeration of the powers with which the laws of England have intruſted the King, we are at a loſs to reconcile them with the idea of a Monarchy, which, we are told, is limited. The King not only unites in himſelf all the branches of the Executive power; he not only diſpoſes, without controul, of the whole military power in the State; but he is moreover, it ſeems, the Maſter of the Law itſelf, ſince he calls up, and diſmiſſes, at his will, the Legiſlative Bodies. We find him therefore, at firſt ſight, inveſted with all the prerogatives that ever were claimed by the moſt abſolute Monarchs; and we are at a loſs to find that liberty which the Engliſh ſeem ſo confident they poſſeſs.

But the Repreſentatives of the people ſtill have, and that is ſaying enough, they ſtill have in their hands, now that the Conſtitution is

fully eſtabliſhed, the ſame powerful weapon which has enabled their anceſtors to eſtabliſh it. It is ſtill from their liberality alone that the King can obtain ſubſidies; and in theſe days, when every thing is rated by pecuniary eſtimation—in theſe days, when gold is become the great moving ſpring of affairs, it may be ſafely affirmed, that he who depends on the will of other Men, with regard to ſo important an article, is, whatever his power may be in other reſpects, in a ſtate of real dependence.

This is the caſe of the King of England. He has in that capacity, and without the grant of his people, ſcarcely any revenue. A few hereditary duties on the exportation of wool, (which, ſince the eſtabliſhment of manufactures, are become tacitly extinguiſhed) a branch of the exciſe, which, under Charles the Second, was annexed to the Crown as an indemnification for the military ſervices it gave up, and which, under George the Firſt, has been fixed to ſeven thouſand pounds, a duty of two ſhillings on every ton of wine imported, the wrecks of ſhips of which the owners remain unknown, whales and ſturgeons thrown on the coaſt, ſwans ſwimming on public rivers, and a few other feudal relics, now compoſe the whole appropriated revenue of the King, and

are all that remains of the ancient inheritance of the Crown.

The King of England, therefore, has the prerogative of commanding armies, and equipping fleets—but without the concurrence of his Parliament he cannot maintain them. He can beſtow places and employments—but without his Parliament he cannot pay the ſalaries attending on them. He can declare war, but without his Parliament it is impoſſible for him to carry it on. In a word, the Royal Prerogative, deſtitute, as it is, of the power of impoſing taxes, is like a vaſt body which cannot of itſelf accompliſh its motions; or, if you will, it is like a ſhip completely equipped, but from which the Parliament can at pleaſure draw off the water, and leave it a-ground,—— and alſo ſet it again afloat by granting ſubſidies.

And indeed we ſee, that, ſince the eſtabliſhment of this right of the Repreſentatives of the People, to grant, or refuſe, ſubſidies to the Crown, their other privileges have been continually increaſing. Though theſe Repreſentatives were not, in the beginning, admitted into Parliament but upon the moſt diſadvantageous terms, yet they ſoon found means, by joining petitions to their money-bills, to have a ſhare in framing thoſe laws by which they

were in future to be governed; and this method of proceeding, which at firſt was only tolerated by the King, they afterwards converted into a right, by declaring, under Henry the Fourth, that they would not, thenceforward, come to any reſolutions with regard to ſubſidies, before the King had given a preciſe anſwer to their petitions.

In ſubſequent times we ſee the Commons continually ſucceſsful, by their exertions of the ſame privilege, in their endeavours to lop off the deſpotic powers which ſtill made a part of the regal prerogative. Whenever abuſes of power had taken place, which they were ſeriouſly determined to correct, they made *grievances and ſupplies*, to uſe the expreſſion of Sir Thomas Wentworth, *go hand in hand together*, which always produced the redreſs of them. And in general, when a bill, in conſequence of its being judged by the Commons eſſential to the public welfare, has been joined by them to a money bill, it has ſeldom failed *to paſs in that agreeable company.* (a)

(a) In mentioning the forcible uſe which the Commons have at times made of their power of granting ſubſidies, by joining proviſions of a different nature to bills that had grants for their object, I only mean to ſhew the great efficiency of that power, which was the ſubject of this Chapter, without pretending to ſay any

CHAP. VI.

The ſame Subject continued.

BUT this force of the prerogative of the Commons, and the facility with which it may be exerted, however neceſſary they may have been for the firſt eſtabliſhment of the Conſtitution, might prove too conſiderable at preſent, when it is requiſite only to ſupport it. There might be the danger, that, if the Parliament ſhould ever exert their privilege to its full extent, the Prince, reduced to deſpair, might reſort to fatal extremities; or that the Conſtitution, which ſubſiſts only by virtue of its equilibrium, might in the end be ſubverted.

Indeed this is a caſe which the prudence of Parliament has foreſeen. They have, in this reſpect, impoſed laws upon themſelves; and without touching their prerogative itſelf, they

thing as to the propriety of the meaſure. The Houſe of Lords have even found it neceſſary (which confirms what is ſaid here) to form, as it were, a confederacy among themſelves, for the ſecurity of their Legiſlative authority, againſt the unbounded uſe which the Commons might make of their power of taxation; and it has been made a ſtanding order of their Houſe, to reject any bill whatſoever to which a money-bill has been *tacked*.

have moderated the exerciſe of it. A cuſtom has for a long time prevailed, at the beginning of every reign, and in the kind of overflowing of affection which takes place between a King and his firſt Parliament, to grant the King a revenue for his life; a proviſion which, with reſpect to the great exertions of his power, does not abridge the influence of the Commons, but yet puts him in a condition to ſupport the dignity of the Crown, and affords him, who is the firſt Magiſtrate in the Nation, that independence which the laws inſure alſo to thoſe Magiſtrates who are particularly intruſted with the adminiſtration of Juſtice. *(a)*

This conduct of the Parliament provides an admirable remedy for the accidental diſorders of the State. For though, by the wiſe diſtribution of the powers of Government, great

(*a*) The twelve Judges.—Their commiſſions, which in former times were often given them *durante bene placito*, now muſt always "be made *quamdiu ſe bene geſſerint*, and "their ſalaries aſcertained; but upon an addreſs of both "Houſes it may be lawful to remove them."—Stat. 13. Will. III. c. 2. In the firſt year of the reign of his preſent Majeſty, it has been moreover enacted, that the commiſſions of the Judges ſhall continue in force, notwithſtanding the demiſe of the King; which has prevented their being dependent, with regard to their continuation ino ffice, on the heir apparent.

uſurpations are become in a manner impracticable, nevertheleſs it is impoſſible but that, in conſequence of the continual, though ſilent efforts of the Executive power to extend itſelf, abuſes will at length ſlide in. But here the powers, wiſely kept in reſerve by the Parliament, afford the means of remedying them. At the end of each reign, the civil liſt, and conſequently that kind of independence which it procured, are at an end. The Succeſſor finds a Throne, a Sceptre, and a Crown; but he finds neither power, nor even dignity; and before a real poſſeſſion of all theſe is given him, the Parliament have it in their power to take a thorough review of the State, as well as correct the ſeveral abuſes that may have crept in during the preceding reign; and thus the Conſtitution may be brought back to its firſt principles.

England, therefore, by this means, enjoys a very great advantage, and one that all free States have ſought to procure for themſelves; I mean that of a periodical reformation. But the expedients which Legiſlators have contrived for this purpoſe in other Countries, have always, when attempted to be reduced into practice, been found to be productive of the moſt fatal conſequences. The laws which were

made in Rome, to reſtore that equality which is the eſſence of a Democratical Government, were always found impracticable: the attempt alone endangered the overthrow of the Republic; and the expedient, which the Florentines called *ripigliar il ſtato*, proved nowiſe happier in its conſequences. This was becauſe all thoſe different remedies were deſtroyed beforehand, by the very evils they were meant to cure; and the greater the abuſes were, the more impoſſible it was to correct them.

But the means of reformation which the Parliament of England has taken care to reſerve to itſelf, is the more effectual, as it goes leſs directly to its end. It does not oppoſe the uſurpations of prerogative, as it were, in front—it does not encounter it in the middle of its career, and in the fulleſt flight of its exertion: but it goes in ſearch of it to its ſource, and to the principle of its action. It does not endeavour forcibly to overthrow it; it only enervates its ſprings.

What increaſes ſtill more the mildneſs of the operation, is, that it is only to be applied to the uſurpations themſelves, and paſſes by, what would be far more formidable to encounter, the obſtinacy and pride of the uſurpers.

Every thing is tranſacted with a new Sovereign, who, till then, has had no ſhare in public affairs, and has taken no ſtep which he may conceive himſelf obliged in honour to ſupport. In fine, they do not wreſt from him what the good of the State requires he ſhould give up: he himſelf makes the ſacrifice.

The truth of all theſe obſervations is remarkably confirmed by the events that followed the reign of the two laſt Henries. Every barrier that protected the People againſt the excurſions of Power had been broke through. The Parliament, in their terror, had even enacted that proclamations, that is the will of the King, ſhould have the force of laws. (*a*) The Conſtitution ſeemed to be quite undone. Yet, on the firſt opportunity afforded by a new reign, liberty began to make again its appearance. (*b*) And when the Nation, at length recovered from its long ſupineneſs, had, at the acceſſion of Charles the Firſt, another opportunity of a change of Sovereign, that enormous maſs

(*a*) Stat. 31 Hen. VIII. Chap. 8.

(*b*) The laws concerning Treaſon, paſſed under Henry the Eighth, which Judge Blackſtone calls "an amazing "heap of wild and new-fangled treaſons," were, together with the ſtatute juſt mentioned, repealed in the beginning of the reign of Edward VI.

of abuſes, which had been accumulating, or gaining ſtrength, during five ſucceſſive reigns, was removed, and the ancient laws were reſtored.

To which add, that this ſecond reformation, which was ſo extenſive in its effects, and might be called a new creation of the Conſtitution, was accompliſhed without producing the leaſt convulſion. Charles the Firſt, in the ſame manner as Edward had done in former times (*a*), aſſented to every regulation that was paſſed; and whatever reluctance he might at firſt manifeſt, yet the Act called *the Petition of Right* (as well as that which afterwards compleated the work) received the Royal Sanction without bloodſhed.

It is true, great misfortunes followed; but they were the effects of particular circumſtances. During the time which preceded the reign of the Tudors, the nature and extent of regal authority having never been accurately defined, the exorbitant power of the Princes of that Houſe had gradually introduced political prejudices, of even an extrava-

(*a*) Or, which is equally in point, the Duke of Somerſet his uncle, who was the Regent of the Kingdom, under the name of Protector.

gant kind: thoſe prejudices, having had a hundred and fifty years to take root, could not be ſhaken off but by a kind of general convulſion; the agitation continued after the action, and was carried to exceſs by the religious quarrels which aroſe at that time.

CHAPTER VIII.

New Reſtrictions.

THE Commons, however, have not intirely relied on the advantages of the great prerogative with which the Conſtitution has intruſted them.

Though this prerogative is, in a manner, out of danger of an immediate attack, they have nevertheleſs ſhewn at all times the greateſt jealouſy on its account. They never ſuffer, as we have obſerved before, a money-bill to begin any where but with themſelves; and any alteration that may be made in it, in the other Houſe, is ſure to be rejected. If the Commons had not moſt ſtrictly reſerved to themſelves the exerciſe of a prerogative on which their very exiſtence depends, the

whole might at length have ſlidden into that other body which they had ſuffered to ſhare in it equally with them. If any other perſons beſides the Repreſentatives of the People, had had a right to make an offer of the produce of the labour of the people, the executive Power would ſoon have forgot, that it only exiſts for the advantage of the public (*a*).

(*a*) As the Crown has the undiſputed prerogative of aſſenting to, and diſſenting from, what bills it thinks proper, as well as of convening, proroguing, and diſſolving, the Parliament, whenever it pleaſes, the latter have no aſſurance of having a regard paid to their Bills, or even of being allowed to aſſemble, but what may reſult from the need the Crown ſtands in of their aſſiſtance: the danger, in that reſpect, is even greater for the Commons than for the Lords, who enjoy a dignity which is hereditary, as well as inherent to their perſons, and form a permanent Body in the State; whereas the Commons compleatly vaniſh, whenever a diſſolution takes place: there is, therefore, no exaggeration in what has been ſaid above, that their *very being* depends on their power of granting ſubſidies to the Crown.

Moved by theſe conſiderations, and no doubt by a ſenſe of their duty towards their Conſtituents, to whom this right of taxation originally belongs, the Houſe of Commons have at all times been very careful leſt precedents ſhould be eſtabliſhed, which might, in the moſt diſtant manner, tend to weaken that right. Hence the warmth, I might ſay the reſentment, with which they have always rejected even the amendments propoſed by

Beſides, though this prerogative has of itſelf, we may ſay, an irreſiſtible efficiency, the Parliament has neglected nothing that may increaſe it, or at leaſt the facility of its exerciſe; and though they have allowed the general prerogatives of the Sovereign to remain undiſputed, they have in ſeveral caſes endeavoured to reſtrain the uſe he might make of them, by entering with him into divers expreſs and ſolemn conventions for that purpoſe *(a)*.

Thus the King is indiſputably inveſted with the excluſive right of aſſembling Parliaments;

the Lords in their Money Bills. The Lords however have not given up their pretenſion to make ſuch amendments; and it is only by the vigilance and conſtant predetermination of the Commons to reject all alterations whatever made in their Money bills, without even examining them, that this pretenſion of the Lords is reduced to be an uſeleſs, and only dormant, claim' The firſt inſtance of a miſunderſtanding between the two Houſes, on that account, was in the year 1671: and the reader may ſee at length, in Vol. I. of the *Debates of the Houſe of Commons*, the reaſons that were at that time alledged on both ſides.

(*a*) Laws made to bind ſuch Powers in a State, as have no ſuperior Power by which they may be legally compelled to the execution of them (for inſtance, the Crown, as circumſtanced in England) are nothing more than conventions, or treaties, made with the Body of the People.

yet he muſt aſſemble one, at leaſt once in three years; and this obligation on the King, which was, we find, inſiſted upon by the People in very early times, has been ſince confirmed by an Act paſſed in the ſixteenth year of the reign of Charles the Second.

Moreover, as the moſt fatal conſequences might enſue, if laws which might moſt materially affect public liberty, could be enacted in Parliaments abruptly and imperfectly ſummoned, it has been eſtabliſhed that the Writs for aſſembling a Parliament muſt be iſſued forty days at leaſt before the firſt meeting of it. Upon the ſame principle it has alſo been enacted, that the King cannot abridge the term he has once fixed for a prorogation, except in the two following caſes, viz. of a rebellion, or of imminent danger of a foreign invaſion; in both which caſes a fourteen days notice muſt be given (*a*).

Again, the King is the head of the Church; but he can neither alter the eſtabliſhed religion, or call individuals to an account for their religious opinions. (*b*) He cannot even

(*a*) Stat. 30 Geo. II. c. 25.

(*b*) The Convocation, or aſſembly of the Clergy, of which the King is the head, can only regulate ſuch affairs

profeſs the religion which the Legiſlature has particularly forbidden; and the Prince who ſhould profeſs it, is declared incapable of *inheriting, poſſeſſing, or enjoying, the Crown of theſe Kingdoms. (a)*

The King is the firſt Magiſtrate; but he can make no change in the maxims and forms conſecrated by law or cuſtom: he cannot even influence, in any caſe whatever, the deciſion of cauſes between ſubject and ſubject; and James the Firſt, aſſiſting at the Trial of a cauſe, was reminded by the Judge, that he could deliver no opinion. (*b*) Laſtly, though crimes are proſecuted in his name, he cannot refuſe to lend it to any particular perſons who have complaints to prefer.

as are merely eccleſiaſtical; they cannot touch the Laws, Cuſtoms, and Statutes, of the Kingdom.—Stat. 25 Hen. VIII. c. 19.

(a) 1 Will. and M. Stat. 2. c. 2.

(b) Theſe principles have ſince been made an expreſs article of an Act of Parliament; the ſame which aboliſhed the Star Chamber. "Be it likewiſe declared and enacted, "by the authority of this preſent Parliament, That "neither his Majeſty, nor his Privy Council, have, or "ought to have, any juriſdiction, power, or authority, to "examine or draw into queſtion, determine or diſpoſe of "the lands, tenements, goods, of chattels, or any of the "ſubjects of this Kingdom."—Stat. A. 16. ch. i. cap. 10. § 10.

The King has the privilege of coining money; but he cannot alter the ſtandard.

The King has the power of pardoning offenders; but he cannot exempt them from making a compenſation to the parties injured. It is even eſtabliſhed by law, that, in a caſe of murder, the widow, or next heir, ſhall have a right to proſecute the murderer; and the King's pardon, whether it preceded the Sentence paſſed in conſequence of ſuch proſecution, or whether it be granted after it, cannot have any effect. (*a*)

The King has the military power; but ſtill, with reſpect to this, he is not abſolute. It is true, in regard to the ſea forces, as there is in them this ineſtimable advantage, that they cannot be turned againſt the liberty of the Nation, at the ſame time that they are the ſureſt bulwark of the Iſland, the King may keep them as he thinks proper; and in this reſpect he lies only under the general reſtraint of applying to Parliament, to obtain the means of doing it. But in regard to land forces, as they may become an immediate

(*a*) The method of proſecution mentioned here, is called an *Appeal*; it muſt be ſued within a year and a day after the completion of the crime.

weapon in the hands of Power, for throwing down all the barriers of public liberty, the King cannot raiſe them without the conſent of Parliament. The guards of Charles the Second were declared anti-conſtitutional; (*a*) and James's army was one of the cauſes of his being at length dethroned. (*b*)

In theſe times however, when it is become a cuſtom with Princes to keep thoſe numerous armies which ſerve as a pretext and means of oppreſſing the People, a State that would maintain its independence, is obliged, in great meaſure, to do the ſame. The Parliament has therefore thought proper to eſtabliſh a ſtanding body of troops, which amounts to about thirty thouſand Men, of which the King has the command.

But this army is only eſtabliſhed for one year; at the end of that term, it is (unleſs re-eſtabliſhed) to be *ipſo facto* diſbanded; and as the queſtion which then lies before Parlia-

(*a*) He had carried them to the number of four thouſand Men.

(*b*) A new ſanction has been given to the above reſtriction, in the ſixth Article of the Bill of Rights: "A "ſtanding army, without the conſent of Parliament, is "againſt law."

ment, is not, whether the army *ſhall be diſſolved*, but whether it ſhall be *eſtabliſhed anew*, as if it had never exiſted, any one of the three branches of the Legiſlature may, by its diſſent, hinder its continuance.

Beſides, the funds for the payment of this body of troops, are to be raiſed by taxes that never are eſtabliſhed for more than one year (*a*); and it becomes likewiſe neceſſary, at the end of this term, again to eſtabliſh them (*b*). In a word, this inſtrument of defence, which the circumſtances of modern times have cauſed to be judged neceſſary, being capable, on the other hand, of being applied to the moſt dangerous purpoſes, has been joined to the State by only a ſlender thread, the knot of which may be ſlipped on the firſt appearance of danger. (*c*)

(*a*) The land tax, and malt tax.

(*b*) It is alſo neceſſary that the Parliament, when they renew the Act called the *Mutiny-Act*, ſhould authoriſe the different Courts Martial to puniſh military offences, and deſertion. It can therefore refuſe the King even the neceſſary power of military diſcipline.

(*c*) To theſe laws, or rather conventions, between King and People, I ſhall add here the Oath which the King takes at his Coronation; a compact which, if it cannot have the ſame preciſion as the laws we have related above, yet in a manner comprehends them all, and has the farther advantage of being declared with more ſolemnity.

But theſe laws which limit the King's authority, would not, of themſelves, have been ſufficient. As they are, after all, only intellectual barriers, which it is poſſible that the King might not at all times reſpect, as the check which the Commons have on his proceedings, by a refuſal of ſubſidies, affects too much the whole State, to be exerted on every particular abuſe of his power, and laſtly, as

"*The archbiſhop or biſhop ſhall ſay*, Will you ſolemnly "promiſe and ſwear to govern the people of this King- "dom of England, and the dominions thereto belonging, "according to the Statutes in Parliament agreed on, and "the laws and cuſtoms of the ſame?—*The king or queen "ſhall ſay*, I ſolemnly promiſe ſo to do.

"*Archbiſhop or biſhop*. Will you to your power cauſe "law and juſtice, in mercy, to be executed in all your "judgments?—*King or queen*. I will.

"*Archbiſhop or biſhop*. Will you to the utmoſt of "your power maintain the laws of God, the true pro- "feſſion of the goſpel, and the proteſtant reformed "religion eſtabliſhed by the law? And will you pre- "ſerve unto the biſhops and clergy of this realm, and "to the churches committed to their charge, all ſuch "rights and privileges as by law do or ſhall appertain "unto them, or any of them?—*King or queen*. All this "I promiſe to do.

"*After this the king or queen, laying his or her hand upon "the holy goſpels, ſhall ſay*, The things which I have here "before promiſed I will perform and keep: ſo help me "God. *And then ſhall kiſs the book*."

even this means might in ſome degree be eluded, either by breaking the promiſes which have procured ſubſidies, or by applying them to uſes different from thoſe for which they were appointed, the Conſtitution has beſides ſupplied the Commons with a means of immediate oppoſition to the miſconduct of Government by giving them a right to impeach the Miniſters.

It is true, the King himſelf cannot be arraigned before Judges; becauſe, if there were any that could paſs ſentence upon him, it would be they, and not he, who muſt finally poſſeſs the executive power: but, on the other hand, the King cannot act without Miniſters; it is therefore thoſe Miniſters, that is, thoſe indiſpenſable inſtruments, whom they attack.

If, for example, the public money has been employed in a manner contrary to the declared intention of thoſe who granted it, an impeachment may be brought againſt thoſe who had the management of it. If any abuſe of power is committed, or in general any thing done contrary to the public weal, they proſecute thoſe who have been either the inſtruments, or the adviſers of the meaſure. (a)

(a) It was upon theſe principles that the Commons, in the beginning of this century, impeached the Earl of

But who ſhall be the Judges to decide in ſuch a cauſe? What Tribunal will flatter itſelf, that it can give an impartial deciſion, when it ſhall ſee preſented at its bar the Government itſelf as the accuſed, and the Repreſentatives of the People as the accuſers?

It is before the Houſe of Peers that the Law has directed the Commons to carry their accuſation; that is, before Judges whoſe dignity, on the one hand, renders them independent, and who, on the other, have a great honour to ſupport in that awful function where they have all the Nation for ſpectators of their conduct.

When the impeachment is brought to the Lords, they commonly order the perſon accuſed to be impriſoned. On the day appointed, the Deputies of the Houſe of Commons, with the perſon impeached, make their appearance: the impeachment is read in his preſence; Counſel are allowed him, as well as time, to prepare for his defence; and at the expiration of this term, the trial goes on from day to day, with open doors, and every thing is communicated in print to the public.

Oxford, who had adviſed the Treaty of Partition, and the Lord Chancellor Somers, who had affixed the great Seal to it.

But whatever advantage the law grants to the perſon impeached for his juſtification, it is from the intrinſic merits of his conduct that he muſt draw his arguments and proofs. It would be of no ſervice to him, in order to juſtify a criminal conduct, to alledge the commands of the Sovereign; or, pleading guilty with reſpect to the meaſures imputed to him, to produce the Royal pardon (*a*). It is againſt the Adminiſtration itſelf that the impeachment is carried on; it ſhould therefore by no

(*a*) This point in ancient times was far from being clearly ſettled. In the year 1678, the Commons having impeached the Earl of Danby, he pleaded the King's pardon in bar to that impeachment: great altercations enſued on that ſubject, which were terminated by the diſſolution of that Parliament. It has been ſince enacted, (Stat. 12 and 13 W. III. c. 2) "that no pardon under "the great ſeal can be pleaded in bar to an impeach-"ment by the Houſe of Commons."

I once aſked a Gentleman very learned in the laws of this Country, if the King could remit the puniſhment of a Man condemned in conſequence of an impeachment of the Houſe of Commons; he anſwered me, the Tories will tell you the King can, and the Whigs, he cannot.—But it is not perhaps very material that the queſtion ſhould be decided: the great public ends are attained when a corrupt Miniſter is removed with diſgrace, and the whole Syſtem of his proceedings unveiled to the public eye.

means interfere: the King can neither ſtop nor ſuſpend its courſe, but is forced to behold, as an inactive ſpectator, the diſcovery of the ſhare which he may himſelf have had in the illegal proceedings of his ſervants, and to hear his own ſentence in the condemnation of his Miniſters.

An admirable expedient! which, by removing and puniſhing corrupt Miniſters, affords an immediate remedy for the evils of the State, and ſtrongly marks out the bounds within which Power ought to be confined; which takes away the ſcandal of guilt and authority united, and calms the people by a great and awful act of Juſtice: an expedient, in that reſpect eſpecially, ſo highly uſeful, that it is to the want of the like, that Machiavel attributes the ruin of his Republic.

But all theſe general precautions to ſecure the rights of the Parliament, that is, thoſe of the Nation itſelf, againſt the efforts of the executive Power, would be vain, if the Members themſelves remained expoſed to them. Being unable openly to attack, with any ſafety to itſelf, the two legiſlative bodies, and by a forcible exertion of its prerogatives, to make, as it were, a general aſſault, it would, by ſubdividing the ſame prerogatives, gain an

entrance, and ſometimes by intereſt, and at others by fear, guide the general will by influencing that of individuals.

But the laws which ſo effectually provide for the ſafety of the People, provide no leſs for that of the Members, whether of the Houſe of Peers, or that of the Commons. There are not known in England, either thoſe *Commiſſaries* who are always ready to find thoſe guilty, whom the wantonneſs of ambition points out, nor thoſe ſecret impriſonments, which are, in other Countries, the uſual expedients of Government. As the forms and maxims of the Courts of Juſtice are ſtrictly preſcribed, and every individual has an invariable right to be judged according to Law, he may obey without fear the dictates of public virtue. And, what crowns all theſe precautions, is its being a fundamental maxim, "That the freedom of ſpeech, "and debates and proceedings in Parliament, "ought not to be impeached or queſtioned "in any Court or place out of Parliament (*a*)."

(*a*) Bill of Rights. Art. 9.

The legiſlators, on the other hand, have not forgot that intereſt, as well as fear, may impoſe ſilence on duty. To prevent its effects, it has been enacted, that all perſons concerned in the management of any taxes created ſince 1692, commiſſioners of prizes, navy, victualling-office, &c. comptrollers of the army accounts, agents for regiments; the clerks in the different offices of the revenue, any perſons that hold any new office under the Crown, created ſince 1705, or having a penſion under the Crown, during pleaſure, or for any term of years, are incapable of being elected Members. Beſides, if any Member accepts an office under the Crown, except it be an Officer in the army or navy accepting a new commiſſion, his ſeat becomes void; though ſuch Member is capable of being re-elected.

Such are the precautions hitherto taken by the Legiſlators for preventing the undue influence of the great prerogative of diſpoſing of rewards and places; precautions which have been ſucceſſively taken, according as circumſtances have ſhewn them to be neceſſary; and which we may thence ſuppoſe, are owing to cauſes powerful enough to produce

produce the eſtabliſhment of new ones, whenever circumſtances ſhall point out the neceſſity of them (*a*).

(*a*) Nothing can be a better proof of the efficacy of the cauſes that produce the liberty of the Engliſh, and which will be explained hereafter, than thoſe victories which the Parliament from time to time gains over itſelf, and in which the Members, forgetting all views of private ambition, only think of their intereſt as ſubjects.

Since this was firſt written, an excellent regulation has been made for the deciſion of controverted elections. Formerly the Houſe decided them in a very ſummary manner, and the witneſſes were not examined upon oath. But, by an Act paſſed this Seſſion, the deciſion is now to be left to a Jury, or Committee, of fifteen Members, formed in the following manner. Out of the Members preſent, who muſt not be leſs than one hundred, forty-nine are drawn by lots: out of theſe, each Candidate ſtrikes off one alternately, till there remain only thirteen, who, with two others, named out of the whole Houſe, one by each Candidate, are to form the Committee: in order to ſecure the neceſſary number of a hundred Members, all other buſineſs in the Houſe is to be ſuſpended, till the above operations are completed.

CHAP. IX.

Of private Liberty, or the Liberty of Individuals.

WE have hitherto only treated of general liberty, that is, of the rights of the Nation as a Nation, and of its ſhare in the Government. It now remains that we ſhould treat particularly of a thing without which this general liberty, being abſolutely fruſtrated in its object, would be only a matter of oſtentation, and even could not long ſubſiſt; I mean the liberty of individuals.

Private Liberty, according to the diviſion of the Engliſh Lawyers, conſiſts, firſt, of the right of *Property*, that is, of the right of enjoying excluſively the gifts of fortune, and all the various fruits of one's induſtry. Secondly, of the right of *Perſonal Security*. Thirdly, of the *Loco-motive Faculty*, taking the word Liberty in its more confined ſenſe.

Each of theſe rights, ſay again the Engliſh Lawyers, is inherent in the perſon of every Engliſhman: they are to him as an inheritance, and he cannot be deprived of them, but by virtue of a ſentence paſſed according to the

laws of the land. And indeed, as this right of inheritance is expreſſed in Engliſh by one word (*birth-right*) the ſame as that which expreſſes the King's title to the Crown, it has, in times of oppreſſion, been often oppoſed to him as a right doubtleſs of a leſs extent, but of a ſanction equal to that of his own.

One of the principal effects of the right of Property is, that the King can take from his ſubjects no part of what they poſſeſs; he muſt wait till they themſelves grant it him: and this right, which, as we have ſeen before, is, by its conſequences, the bulwark that protects all the others, has moreover the immediate effect of preventing one of the chief cauſes of oppreſſion.

In regard to the attempts to which the right of property might be expoſed from one individual to another, I believe I ſhall have ſaid every thing, when I have obſerved, that there is no Man in England who can oppoſe the irreſiſtible power of the Laws,—that, as the Judges cannot be deprived of their employments but on an accuſation by Parliament, the effect of intereſt with the Sovereign, or with thoſe who approach his perſon, can ſcarcely influence their deciſions,—that, as the Judges themſelves have no power to paſs ſen-

tence, till the matter of fact has been ſettled by Men nominated, we may almoſt ſay, at the common choice of the parties *(a)*, all private views, and conſequently all reſpect of perſons, are baniſhed from the Courts of Juſtice. However, that nothing may be wanting which may help to throw light on the ſubject I have undertaken to treat, I ſhall relate, in general, what is the law in civil matters, that has taken place in England.

When the Pandects were found at Amalphi, the Clergy, who were then the only Men that were able to underſtand them, did not neglect that opportunity of increaſing the influence they had already obtained, and cauſed them to be received in the greater part of Europe. England, which was deſtined to have a Conſtitution ſo different from that of other States, was to be farther diſtinguiſhed by its rejecting the Roman Laws.

Under William the Conqueror, and his immediate ſucceſſors, a multitude of foreign Eccleſiaſtics flocked to the Court of England. Their influence over the mind of the Sovereign, which, in the other States of Europe, as

(a) Owing to the extenſive right of challenging jurymen, which is allowed to every perſon brought to his trial, though not frequently uſed.

they were then conſtituted, might be conſidered as matter of little importance, was not ſo in a country where the Sovereign being all-powerful, to obtain influence over him was to obtain power itſelf. The Engliſh Nobility ſaw, with the greateſt jealouſy, Men of a condition ſo different from their own, veſted with a power, to the attacks of which they were immediately expoſed, and thought that they would carry that power to the height, if they were ever to adopt a ſyſtem of laws which thoſe ſame Men ſought to introduce, and of which they would neceſſarily become both the depoſitaries and interpreters.

It happened, therefore, by a ſomewhat ſingular conjunction of circumſtances, that to the Roman laws brought over to England by Monks, the idea of Eccleſiaſtical power became aſſociated, in the ſame manner as the idea of Deſpotiſm was afterwards aſſociated with the Religion of the ſame Monks, when favoured by Kings who endeavoured to eſtabliſh a deſpotic government. The Nobility, at all times, rejected theſe laws, even with a degree of ill humour (*a*); and the uſurper Ste-

(*a*) The nobility, under the reign of Richard II, declared in the French language of thoſe times, "Purce "que le roialme d' Engleterre n'étoit devant ces heures,

phen, whoſe intereſt it was to conciliate their affections, went ſo far as to prohibit the ſtudy of them.

The general diſpoſition of things eſtabliſhing, as we have ſeen, a great communication between the Nobility and the People, the averſion to the Roman laws gradually ſpread itſelf far and wide; and thoſe laws, whoſe wiſdom in many caſes, and particularly their extenſiveneſs, ought naturally to have procured them admittance when the Engliſh laws themſelves were as yet but in their infancy, experienced the moſt ſteady oppoſition from the Lawyers; and as thoſe perſons who ſought to introduce them, frequently renewed their attempts, there at length aroſe a kind of general combination amongſt the Laity, to confine them to Univerſities and Monaſteries (*a*).

" ne al'entent du Roy notre Seignior, & Seigniors du " Parlement, unques ne ſera rulé ne governé par la ley " civil." viz. Inaſmuch as the Kingdom of England was not before this time, nor according to the intent of the King our Lord, and Lords of Parliament, ever ſhall be, ruled or governed by the civil law.—*In Rich. Parlamento Weſtmonaſterii, Feb.* 3. *Anno* 2.

(*a*) It might perhaps be ſhewn, if it belonged to the ſubject, that the liberty of thinking in religious matters, which has at all times remarkably prevailed in England, is owing to much the ſame cauſes as its political

This oppoſition was carried ſo far, that Forteſcue, Chief Juſtice of the King's Bench, and afterwards Chancellor, under Henry VI. wrote a Book intitled *De Laudibus Legum Angliæ*, in which he propoſes to demonſtrate the ſuperiority of the Engliſh laws over the Civil; and, that nothing might be wanting in his arguments on this ſubject, he gives them the advantage of a ſuperior antiquity, and traces their origin to a period much anterior to the foundation of Rome.

This ſpirit has been even preſerved to much more modern times; and when we peruſe the many paragraphs which Judge Hale has writ-

liberty: both perhaps are owing to this, that the ſame Men, whoſe intereſt it is in other Countries that the people ſhould be influenced by prejudices of a political or religious kind, have been in England forced to inform and unite with them. I ſhall here take occaſion to obſerve, in anſwer to the reproach made to the Engliſh, by Preſident Henault, in his much-eſteemed Chronological Hiſtory of France, that the frequent changes of religion which have taken place in England, do not argue any ſervile diſpoſition in the people; they only prove the equilibrium between the then exiſting Sects: there was none but what might become the prevailing one, whenever the Sovereign thought proper to declare for it; and it was not England, as people may think at firſt ſight, it was only its Government which changed its religion.

ten in his Hiſtory of the Common Law, to prove, that in the few caſes in which the Civil Law is admitted in England, it can have no power by virtue of any deference due to to the orders of Juſtinian (a truth, which certainly had no need of proof), we plainly ſee that this Chief Juſtice, who was alſo a very great Lawyer, had, in this reſpect, retained ſomewhat of the heat of party.

Even at preſent the Engliſh Lawyers attribute the liberty they enjoy, and of which other Nations are deprived, to their having rejected, while thoſe Nations have admitted, the Roman law; which is miſtaking the effect for the cauſe. It is not becauſe the Engliſh have rejected the Roman laws that they are free; but it is becauſe they were free, or at leaſt, becauſe there exiſted among them cauſes which were, in proceſs of time, to make them ſo, that they have been able to reject the Roman laws. But even though they had admitted theſe laws, the ſame circumſtances that have enabled them to reject the whole, would have likewiſe enabled them to reject thoſe parts which might not have ſuited them; and they would have ſeen, that it is very poſſible to receive the deciſions of the Civil law on the ſubject of the *ſervitutes ur-*

banæ & ruſticæ, without adopting its principles with reſpect to the power of the Emperors (*a*).

Of this the Republic of Holland, where the Civil law is adopted, would afford a proof, if there were not the ſtill more ſtriking one, of the Emperor of Germany, who, though in the opinion of his People he is the ſucceſſor to the very Throne of the *Cæſars*, has not by a great deal ſo much power as a King of England; and the reading of the ſeveral treaties which deprive him of the power of nominating the principal officers of the Empire, ſufficiently ſhews, that a ſpirit of unlimited ſubmiſſion to Monarchical power is no neceſſary conſequence of the admiſſion of the Roman Civil Law.

The Laws therefore, that have taken place in England, are what they call the *Unwritten Law*, alſo termed the *Common Law*, and the *Statute Law*.

The *Unwritten Law* is thus called, not becauſe it is only tranſmitted by tradition from generation to generation; but becauſe it is not founded on any known act of the Legiſlature. It receives its force from immemorial cuſtom, and, for the moſt part, derives its origin from

(*a*) What particularly frightens the Engliſh Lawyers is L. 1. Lib. I. Tit. 4. Dig.—*Quod Principi placuerit legis habet vigorem.*

Acts of Parliament enacted in the times which immediately followed the Conqueſt, (particularly thoſe anterior to the time of Richard the Firſt) the originals of which are loſt.

The principal objects ſettled by the Common Law, are the rules of deſcent, the different methods of acquiring property, the various forms required for rendering contracts valid; in all which points it differs from the Civil Law. Thus, by the Common Law, lands deſcend to the eldeſt ſon, to the excluſion of all his brothers and ſiſters; whereas, by the Civil Law, they are equally divided between all the children: by the Common Law, property is transferred by *writing*; but by the Civil Law, *tradition*, or actual delivery, is moreover neceſſary, &c.

The ſource from which the deciſions of the Common Law are drawn, is what is called *præteritorum memoria eventorum*, and is found in the collection of judgments that have been paſſed from time immemorial, and which, as well as the proceedings relative to them, are carefully preſerved under the title of *Records*. In order that the principles eſtabliſhed by this ſeries of judgments may be known, extracts of them are, from time to time, publiſhed under the name of *Reports*; and theſe re-

ports reach, by a regular ſeries, ſo far back as the reign of Edward the Second, inclusively.

Beſides this collection, which is pretty voluminous, there are alſo ſome ancient Authors of great authority among Lawyers; ſuch as *Glanvil*, who wrote under the reign of Henry the Second—*Bracton*, who wrote under Henry the Third,—*Fleta*, and *Lyttelton*. Among more modern Authors, is Sir Edward Coke, Lord Chief Juſtice of the King's Bench under James the Firſt, who has written four books of Inſtitutes, and is at preſent the Oracle of the Common Law.

The Common Law moreover comprehends ſome particular cuſtoms, which are fragments of the ancient Saxon laws, eſcaped from the diſaſter of the Conqueſt; ſuch as that called *Gavelkind*, in the County of Kent, by which lands are divided equally between the Sons; and that called *Borough Engliſh*, by which, in ſome particular diſtricts, lands deſcend to the youngeſt Son.

The Civil Law, in the few inſtances where it is admitted, is likewiſe comprehended under the Unwritten Law, becauſe it is of force only ſo far as it has been authoriſed by immemorial cuſtom. Some of its principles are fol-

lowed in the Eccleſiaſtical Courts, in the Courts of Admiralty, and in the Courts of the two Univerſities; but it is there nothing more than *lex ſub lege graviori*; and theſe different Courts muſt conform to Acts of Parliament, and to the ſenſe given to them by the Courts of Common Law; being moreover ſubjected to the controul of the latter.

Laſtly, the written Law is the collection of the various Acts of Parliament, the originals of which are carefully preſerved, eſpecially ſince the reign of Edward the Third. Without entering into the diſtinctions made by Lawyers with reſpect to them, ſuch as *public* and *private* Acts, *declaratory* Acts, or ſuch as are made to extend or reſtrain the Common Law, it will be ſufficient to obſerve, that being the reſult of the united wills of the Three Conſtituent Parts of the Legiſlature, they, in all caſes, ſuperſede both the Common Law and all former Statutes, and the Judges muſt take cognizance of them, and decide in conformity to them, even though they had not been alledged by the parties (*a*).

The different Courts for the Adminiſtration of Juſtice, in England, are

(*a*) Unleſs they be private Acts.

I. The Court of *Common Pleas*. It formerly made a part of the *Aula Regis*; but as this latter Court was bound by its inſtitution always to follow the perſon of the King, and private individuals experienced great difficulties in obtaining relief from a Court that was ambulatory, and always in motion, it was made one of the articles of the Great Charter, that the Court of Common Pleas ſhould thenceforwards be held in a fixed place *(a)*; and ſince that time it has been ſeated at Weſtminſter. It is compoſed of a Lord Chief Juſtice, with three other Judges; and appeals from its judgments, uſually called, *Writs of Errour*, are brought before the Court of King's Bench.

II. The Court of Exchequer. It was originally eſtabliſhed to determine thoſe cauſes in the which King, or his ſervants, or accomptants were concerned, and has gradually become open to all perſons. The confining the power of this Court to the above claſs of perſons, is therefore now a mere fiction; only a man muſt, for form's ſake, ſet forth in his declaration that he is debtor to the King, whether he be ſo or no. The Court of Exchequer is

(a) Communia placita non ſequantur curiam noſtram, ſed teneantur in aliquo loco certo. Magna Charta, cap. 11.

compoſed of the Chief Baron of the Exchequer, and three other Judges.

III. The Court of King's Bench forms that part of the *Aula Regis* which continued to ſubſiſt after the diſmembering of the Common Pleas. This Court enjoys the moſt extenſive authority of all other Courts: it has the ſuperintendance over all Corporations, and keeps the various juriſdictions in the Kingdom within their reſpective bounds. It takes cognizance, according to the end of its original inſtitution, of all criminal cauſes, and even of many cauſes merely civil. It is compoſed of the Lord Chief Juſtice of the Court of King's Bench, and three other Judges. Writs of errour againſt the judgments paſſed in that Court in civil matters, are brought before the Court of the Exchequer Chamber, or, in moſt caſes, before the Houſe of Peers.

IV. The Court of the Exchequer Chamber. When this Court is formed by the four Barons, or Judges of the Exchequer, together with the Chancellor and Treaſurer of the ſame, it ſits as a Court of Equity; a kind of inſtitution on which a few words will be mentioned hereafter. When it is formed by the twelve Judges, to whom ſometimes the Lord Chancellor is joined, its office is to deliberate, when

properly referred and applied to, and give an opinion on important and difficult caſes, before judgments are paſſed in thoſe Courts where the cauſes are depending.

CHAPTER X.

On the Law in regard to Civil matters, that is obſerved in England.

CONCERNING the manner in which Juſtice is adminiſtered in civil matters in England, and the kind of law that obtains in that reſpect, the following obſervations may be made.

In the firſt place, it is to be obſerved, that the beginning of a civil proceſs in England, and the firſt ſtep uſually taken in bringing an action, is the ſeizing by public authority the perſon againſt whom that action is brought. This is done with a view to ſecure ſuch perſon's appearance before a Judge, or at leaſt make him give ſureties for that purpoſe. In moſt of the Countries of Europe, where the forms introduced in the Roman Civil Law, in the reigns of the latter Emperors, have been imitated, a different method has been adopted

to procure a man's appearance before a Court of Juſtice. The uſual practice is to have the perſon ſued ſummoned to appear before the Court, by a public officer belonging to it, a week before-hand: if no regard is paid to ſuch ſummons twice repeated, the Plaintiff, or his Attorney, is admitted to make before the Court a formal reading of his demand, which is then granted him, and he may proceed to execution (*a*).

In this mode of proceeding, it is taken for granted, that a perſon who declines to appear before a Judge, to anſwer the demand of another, after being properly ſummoned, acknowledges the juſtice of ſuch demand; and this ſuppoſition is very juſt and rational. However, the above-mentioned practice of ſecuring before-hand the body of a perſon ſued, though not ſo mild in its execution as that juſt now deſcribed, nor even more effectual, appears more obvious, and is more readily adopted, in thoſe times when Courts of Law begin

(*a*) A perſon againſt whom a judgment of this kind has been paſſed (which they call in France *un jugement par défaut*) may eaſily obtain relief: but as he now in his turn becomes in a manner the Plaintiff, his deſerting the cauſe, in this ſecond ſtage of it, would leave him without remedy.

to be formed in a Nation; and rules of diſtributive juſtice to be eſtabliſhed; and it is followed in England as a continuation of the methods that were adopted when the Engliſh laws were as yet in their infancy.

In the times we mention, when laws begin to be formed in a Country, the adminiſtration of juſtice between individuals is commonly lodged in the ſame hands which are intruſted with the public and military authority in the State. Judges inveſted with a power of this kind, like to carry on their operations with a high hand: they conſider the refuſal of a Man to appear before them, not as being barely an expedient to avoid doing that which is juſt, but as a contempt of their authority: they of courſe look upon themſelves as being bound to vindicate it; and a writ of *Capias* is ſpeedily iſſued to apprehend the refractory Defendant. A preliminary Writ, or order, of this kind, becomes in time to be uſed of courſe, and as the firſt regular ſtep of a law-ſuit; and thus it is, that in the Engliſh Courts of law, if I am rightly informed, a Writ of *Capias* is either iſſued before the *original* Writ itſelf, (which contains the ſummons of the plaintiff, and a formal delineation of his caſe) or is joined to ſuch Writ, by means of an *ac etiam capias*, and

is ſerved along with it. It may be remembered that, in England, the *Aula Regis*, over which the King himſelf preſided, was originally the common Court of Juſtice for the whole Kingdom in civil as well as criminal matters, and continued ſo till the Court of Common-pleas was in time ſeparated from it.

In Rome, where the diſtribution of civil juſtice was at firſt lodged in the hands of the Kings, and afterwards of the Conſuls, the method of ſeizing the perſon of a Man againſt whom a demand of any kind was preferred, previouſly to any judgment being paſſed againſt him, was likewiſe adopted, and continued to be followed after the inſtitution of the Prætor's Court, to whom the civil branch of the power of the Conſuls was afterwards delegated; and it laſted till very late times; that is, till the times when thoſe capital alterations were made in the Roman civil Law, during the reigns of the latter Emperors, which gave it the form it now has in thoſe Codes or collections of which we are in poſſeſſion.

A very ſingular degree of violence even took place in Rome, in the method uſed to ſecure the perſon of thoſe againſt whom a legal demand was preferred. In England the way

to ſeize upon the perſon of a Man under ſuch circumſtances, is by means of an Officer ſupplied with a Writ or order for that purpoſe, ſuppoſed to be directed to him (or to the Sheriff his employer) from the King himſelf. But in Rome, every one became a kind of public officer in his own cauſe, to aſſert the Prætor's dignity; and, without any oſtenſible legal licence or badge of public authority, had a right to ſeize by force the perſon of his opponent, wherever he met him. The practice was, that the Plaintiff (*Actor*) firſt ſummoned the perſon ſued (*Reum*), with a loud voice, to follow him before the Court of the Prætor (*a*). When the Defendant refuſed to obey ſuch ſummons, the Plaintiff, by means of the words *licet anteſtari*, requeſted the by-ſtanders to be witneſſes of the fact, as a remembrance of which he touched the ears of each of them; and then proceeded to ſeize the perſon of his opponent, by throwing his arms round his neck (*obtorto collo*) thus endeavouring to drag him before the Prætor. When the perſon ſued was, through age or ſickneſs, diſabled from following the Plaintiff, the latter was directed by the law of the Twelve Tables to ſupply him with a horſe (*Jumentum dato*).

(*a*) *Ad Tribunal ſequere. In jus ambula.*

The above method of proceeding was however in after-times mitigated, though very late and ſlowly. In the firſt place it became unlawful to ſeize a Man in his own houſe, as it was the abode of his domeſtic Gods. Women of good family (*Matronæ*) were in time protected from the ſeverity of the above cuſtom, and they could no longer be dragged by force before the Tribunal of the Prætor. The method of placing a ſick or aged perſon by force upon a horſe, ſeems to have been aboliſhed during the latter times of the Republic. Emancipated Sons, and freed Slaves, were afterwards reſtrained from ſummoning their Parents, or late Maſters, without having expreſsly obtained the Prætor's leave, under the penalty of fifty pieces of gold. However, ſo late as the time of Pliny, the old mode of ſummoning before a Judge continued in general to ſubſiſt; though, in the time of Ulpian, the neceſſity of expreſly obtaining the Prætor's leave was extended to all caſes and perſons; and in Conſtantine's reign, the method began to be eſtabliſhed of having legal ſummonſes ſerved only by means of a public Officer appointed for that purpoſe. After that time, other changes in the former law were introduced, from which the mode of proceeding

now uſed on the Continent of Europe, has been borrowed.

In Eng'and likewiſe, ſome changes we may obſerve, have been wrought in the law and practice concerning the arreſts of ſued perſons, though as ſlowly and late as thoſe effected in the Roman Republic or Empire, if not more ſo; which evinces the great impediments of various kinds that obſtruct the improvement of laws in every Nation. So late as the reign of king George the Firſt, an Act was paſſed to prohibit the practice of previous perſonal Arreſt, in caſes of demands under two pounds ſterling; and ſince that time, thoſe Courts, juſtly called *of Conſcience*, have been eſtabliſhed, in which ſuch demands are to be ſummarily decided, and ſimple ſummonſes without arreſt can only be uſed. And lately another Bill has been paſſed on the motion of Lord Beauchamp, whoſe name deſerves to be recorded, by which the like prohibition of arreſt is extended to all caſes of debt under ten pounds ſterling: a Bill the paſſing of which was of twenty, or even a hundred times more real importance than the riſe or fall of a Favourite or a Miniſter, though it has perhaps been honoured with a leſs degree of attention by the Public,

Another peculiarity in the Engliſh Civil Law, is the great refinements, formalities, and ſtrictneſs that prevail in it. Concerning ſuch refinements, which are rather imperfections, the ſame obſervation may be made, that has been made above in regard to the mode and frequency of civil arreſt in England; which is, that they are continuations of methods adopted when the Engliſh Law began to be formed, and are the conſequences of the ſituation in which the Engliſh placed themſelves when they rejected the ready made Code of the Roman civil Law, compiled by order of Juſtinian, which moſt Nations of Europe have admitted, and rather choſe to become their own Lawmakers, and raiſe from the ground the ſtructure of their own national civil Code; which Code, it may be obſerved, is as yet in the firſt ſtage of its formation, as the Roman Law itſelf was during the times of the Republic, and in the reigns of the firſt Emperors.

The time at which the power of adminiſtering juſtice to individuals, becomes ſeparated from the military power (an event which happens ſooner or later in different Countries) is the real æra of the origin of a regular ſyſtem of laws in a Nation. Judges being now deprived of the power of the ſword, or, which

amounts to the ſame, being obliged to borrow that power from other perſons, endeavour to find their reſources within their own Courts, and if poſſible, to obtain ſubmiſſion to their decrees from the great regularity of their proceedings, and the reputation of the impartiality of their deciſions.

At the ſame time, alſo, Lawyers begin to croud in numbers to Courts which it is no longer dangerous to approach, and add their refinements to the rules already ſet down either by the Legiſlature or the Judges. As the employing of them is, eſpecially in the beginning, matter of choice, and they fear, that, if bare common ſenſe were thought ſufficient to conduct a law-ſuit, every body might imagine he knows as much as they do, they contrive difficulties to make their aſſiſtance needful. As the true ſcience of the Law, which is no other than the knowledge of a long ſeries of former rules and precedents, cannot as yet exiſt, they endeavour to create an artificial one to recommend themſelves by. Formal diſtinctions and definitions are invented to expreſs the different kinds of claims Men may ſet up againſt one another; in which almoſt the ſame nicety is diſplayed as that uſed by Philoſophers in claſſing the different ſubjects,

or *kingdoms*, of natural Hiſtory. Settled forms of words, under the name of *Writs*, or ſuch like, are deviſed to ſet thoſe claims forth; and, like introductory paſſes, ſerve to uſher Claimants into the Temple of Juſtice. For fear their Clients ſhould deſert them after their firſt introduction, like a ſick Man who reſts contented with a ſingle viſit of the Phyſician, Lawyers contrive other ceremonies and technical forms for the farther conduct of the proceſs and the *pleadings*; and in order ſtill more ſafely to bind their Clients to their dominion, they at length obtain to make every error relating to their profeſſional regulations, whether it be a *miſnomer*, a *miſpleading*, or ſuch like tranſgreſſion, to be of as fatal a conſequence as a failure againſt the laws of ſtrict Juſtice. Upon the foundation of the above-mentioned definitions and metaphyſical diſtinctions of caſes and actions, a number of ſtrict rules of law are moreover raiſed, with which none can be acquainted but ſuch as are complete maſters of thoſe diſtinctions and definitions.

To a perſon who in a poſterior age obſerves for the firſt time ſuch refinements in the diſtribution of Juſtice, they appear very ſtrange, and even ridiculous. Yet, it muſt be confeſſed, that during the times of the firſt inſtitution of

Magiſtracies and Courts of a civil nature, ceremonies and formalities like thoſe here mentioned, are very uſeful to procure to ſuch Courts, both the confidence of thoſe perſons who are brought before them, and the reſpect of the Public at large; and they thereby become actual ſubſtitutes for military force, which, till then, had been the chief ſupport of Judges. Thoſe ſame forms and profeſſional regulations are moreover uſeful to give uniformity to the proceedings of the Lawyers and of the Courts of Law, and to inſure conſtancy and ſteadineſs to the rules they ſet down among themſelves. And if the whole ſyſtem of the refinements we mention continues to ſubſiſt in very remote ages, it is in a great meaſure owing (not to mention other cauſes) to their having ſo coaleſced with the eſſential parts of the Law as to make danger, or at leaſt great difficulties, to be apprehended from a ſeparation; and they may, in that reſpect, be compared with a ſcaffolding uſed in the raiſing of a houſe, which, though only intended to diſpoſe the materials and ſupport the builders, happens to be ſuffered for a long time afterwards to ſtand, becauſe it is thought the removing of it might endanger the building.

Very ſingular law formalities and refined practices of the kind here alluded to, had been contrived by the firſt Juriſconſults in Rome, with a view to amplify the rules ſet down in the Laws of the Twelve Tables; which being but few, and engraved on braſs, every body could know as well as they: it even was a general cuſtom to give thoſe laws to children to learn, as we are informed by Cicero.

Very accurate definitions, as well as diſtinct branches of caſes and actions, were contrived by the firſt Roman Juriſconſults; and, when a Man had once made his election of that peculiar kind of action he choſe to purſue his claim by, it became out of his power to alter it. Settled forms of words, called *Actiones legis*, were moreover contrived, which Men muſt abſolutely uſe to ſet forth their demands. The party himſelf was to recite the appointed words before the Prætor; and ſhould he unfortunately happen to miſs or add a ſingle word, ſo as to ſeem to alter his real caſe or demand, he loſt his ſuit thereby. To this an alluſion is made by Cicero, when he ſays, "We have a civil law ſo conſtituted, that a "Man becomes non-ſuited, who has not "proceeded in the manner he ſhould have

" done *(a)*." An obſervation of the like nature is alſo to be found in Quintilian, whoſe expreſſions on the ſubject are as follow: " There is beſides another danger; for if but " one word has been miſtaken, we are to be " conſidered as having failed in every point " of our ſuit (*b*)." Similar ſolemnities and appropriated forms of words were moreover neceſſary to introduce the reciprocal anſwers and replies of the Parties, to require and accept ſureties, to produce witneſſes, &c.

Of the above *Actiones legis*, the Roman Juriſconſults and Pontiffs had carefully kept the excluſive knowledge to themſelves, as well as of thoſe Days on which religion did not allow Courts of law to ſit (*c*). One Cn. Flavius, ſecretary to Appius Claudius, having happened to divulge the ſecret of thoſe momentous forms, (an act for which he was afterwards preferred by the People) Juriſconſults contrived freſh ones, which they began to keep written with ſecret cyphers; but a Member of their own

(a) Ita Ius civile habemus conſtitutum, ut cauſa cadat is qui non quemadmodum oportet egerit. De Invent. II. 19.

(b) Eſt etiam periculoſum; quum ſi uno verbo ſit erratum, tota cauſa cecidiſſe videamur. Inſt. Orat. III. 8. VII. 3.

(c) Dies Faſti & Nefaſti.

Body again betrayed them, and the new Collection which he publiſhed, was called *Ius Ælianum*, from his name, Sex. Ælius, in the ſame manner as the firſt Collection had been called *Ius Flavianum*. However, it does not ſeem that the influence of Lawyers became much abridged by thoſe two Collections: beſides written information of that ſort, practice is alſo neceſſary; and the public Collections we mention, like the many books that have been publiſhed on the Engliſh law, could hardly enable a Man to become a Lawyer, at leaſt ſufficiently ſo as to conduct a law ſuit.

Modern Civilians have been at uncommon pains to find out and produce the ancient law *formulæ* we mention; in which they really have had ſurpriſing ſucceſs. Old Comic Writers, ſuch as Plautus and Terence, have ſupplied them with ſeveral: the ſettled words, for inſtance, uſed to claim the property of a Slave, frequently occur in their Works (*a*).

(*a*) The words addreſſed to the Plaintiffs by the perſon ſued, when the latter made his appearance on the day for which he had been compelled to give ſureties, were as follow, and are alluded to by Plaut. *Curcul.* I. 3. v. 5. "Where art thou who haſt obliged me to give "ſureties? Where art thou who ſummoneſt me? "Here I ſtand before thee, do thyſelf ſtand before

Extremely like the above *Actiones legis* are the *Writs* uſed in the Engliſh Courts of law. Thoſe Writs are framed for, and adapted to, every branch or denomination of actions,

me." To which the Plaintiff made anſwer, "Here I am." The Defendant replied, "What doſt thou ſay?" When the Plaintiff anſwered, I ſay . . . *(Aio)* and then followed the form of words by which he choſe to expreſs his action. *Ubi tu es, qui me vadatus es? Ubi tu es qui me citaſti? Ecce ego me tibi iſto; tu contra & te mihi iſte, &c.*

If the action, for inſtance, was brought on account of goods ſtolen, the ſettled penalty or damages for which, was the reſtitution of twice the value, the words to be uſed were, Aio *decem aureos mihi furto tuo abeſſe, teque eo nomine viginti aureos mihi dare oportere.* For work done, ſuch as cleaning of clothes, &c. Aio *te mihi tritici modium de quo inter nos convenit ob polita veſtimenta tua, dare oportere.* For recovering the value of a Slave killed by another Citizen, Aio *te hominem meum occidiſſe, teque mihi quantum ille hoc anno plurimi fuit dare oportere.* For damages done by a vicious animal, Aio *bovem Mævii ſervum meum, Stichum, cornu petiiſſe & occidiſſe, eoque nomine Mævium, aut ſervi æſtimationem præſtare, aut bovem mihi noxæ dare, oportere*; or, Aio *urſum Mævii mihi vulnus intuliſſe, & Mævium quantum æquius melius mihi dare oportere, &c. &c.*

It may be obſerved, that the particular kind of remedy which was provided by the law for the caſe before the Court, was expreſly pointed out in the formula uſed by a Plaintiff; and in regard to this no miſtake was to be made. Thus, in the laſt quoted formula, the words *quantum æquius melius*, ſhew that the Prætor was to appoint inferior Judges, both to aſcertain the damage

ſuch as *detinue*, *treſpaſs*, *action upon the caſe*, *accompt and covenant*, &c. the ſame ſtrictneſs obtains in regard to them as did in regard to the Roman law *formulæ* above mentioned: there is the ſame danger in miſapplying them, or in failing in any part of them; and to uſe the words of an Engliſh Law-writer on the ſubject, "Writs muſt be rightly directed, or "they will be nought... In all writs, care muſt "be had, that they be laid and formed ac- "cording to their caſe, and ſo purſued in the "proceſs thereof *(a)*."

The ſame formality likewiſe prevails in the Engliſh *pleadings* and conduct of the proceſs, as obtained in the old Roman law-proceedings; and in the ſame manner as the Roman Juriſconſults had their *Actionis poſtulationes & editiones*, their *inficiationes*, *exceptiones*, *ſponſiones*, *&c.* ſo the Engliſh Lawyers have their *counts*, *bars*, *re-*

done, and determine finally upon the caſe, according to the direction he previouſly gave them; theſe words being excluſively appropriated to the kind of actions called *Arbitrariæ*, from the above-mentioned Judges or Arbitrators. In actions brought to require the execution of conventions that had no name, the convention itſelf was expreſſed in the formula; ſuch is that which is recited above, relating to work done by the Plaintiff, &c. &c.

(a) Jacob's Law Dictionary. See *Writ*.

plications, rejoinders, ſur-rejoinders, rebutters, ſur-rebutters, &c. A ſcrupulous accuracy in obſerving certain rules, is moreover neceſſary in the management of thoſe pleadings: the following are the words of an Engliſh Law-writer on the ſubject: "Though the art and dexterity of "pleading, was in its nature and deſign only "to render the fact plain and intelligible, and "to bring the matter to judgment with con-"venient certainty, it began to degenerate "from its primitive ſimplicity. Pleaders, yea "and Judges, having become too curious in "that reſpect, pleadings at length ended in "a piece of nicety and curioſity, by which "the miſcarriage of many a cauſe, upon "ſmall trivial objections, has been occaſion-"ed (*a*)."

There is however a difference between the Roman *Actiones legis*, and the Engliſh Writs; which is, that the former might be framed when new ones were neceſſary, by the Prætor or Judge of the Court, or, in ſome caſes, by the body of the Juriſconſults themſelves,—whereas *Writs*, when wanted for ſuch new caſes as may offer, can only be deviſed by a diſtinct Judge or Court, excluſively inveſted

(*a*) Cunningham's Law Dictionary. See *Pleadings*.

with ſuch power, viz. the High Court of Chancery. The iſſuing of Writs already exiſting, for the different caſes to which they belong, is alſo expreſly reſerved to this Court; and ſo important has its office on thoſe two points been deemed by Lawyers, that it has been called, by way of eminence, the Manufactory of Juſtice, (*Officina Juſtitiæ*). Original Writs beſides, when once framed, are not at any time to be altered, except by Parliamentary authority (*a*).

Of ſo much weight in the Engliſh law, are the original delineations of caſes we mention,

(*a*) Writs, legally iſſued, are alſo neceſſary for executing the different incidental proceedings that may take place in the courſe of a law-ſuit, ſuch as producing witneſſes, &c. The names given to the different kinds of writs, are uſually derived from the firſt Latin words by which they began, when they were written in Latin, or at leaſt, from ſome remarkable word in them; which gives riſe to expreſſions ſufficiently uncouth and unintelligible. Thus, a *Pone* is a writ iſſued to oblige a perſon in certain caſes to give ſureties (*Pone per vadium*, and *ſalvos plegios*). A writ of *Subpœna* is to oblige witneſſes, and ſometimes other claſſes of perſons, to appear before a Court. An action of *Qui tam*, is that which is brought to ſue for a proportional ſhare of a fine eſtabliſhed by ſome penal Statute, by the perſon who laid an information: the words in the writ being, *Qui tam pro Domino rege, quam pro ſeipſo in hac parte ſequitur*, &c. &c.

that no cauſe is ſuffered to be proceeded upon, unleſs they firſt appear as legal introductors to it. However important or intereſting the caſe, the Judge, till he ſees the Writ he is uſed to, or at leaſt a Writ iſſued from the right Manufactory, is abſolutely deaf and dumb. He is without eyes to ſee, or ears to hear. And, when a caſe of a new kind offers, for which there is as yet no Writ in being, ſhould the Lord Chancellor and Maſters in Chancery diſagree in creating one, or prove unequal to the arduous taſk, the Great National Council, that is, Parliament themſelves, are in ſuch emergency expreſly applied to: by means of their collected wiſdom, the right myſtical words are brought together: the Judge is reſtored to the free uſe of his organs of hearing and of ſpeech; and, by the creation of a new *Writ*, a new province is added to the Empire of the Courts of Law.

In fine, thoſe precious Writs, thoſe valuable Briefs (*Brevia*), as they are alſo called by way of eminence, which are the elixir and quinteſſence of the Law, have been committed to the ſpecial care of Officers appointed for that purpoſe, whoſe offices derive their names from thoſe peculiar inſtruments they reſpectively uſe for the preſervation of the depoſit with which

they are intruſted; the one being called the office of the *Small bag*, and the other, of the *Hamper (a)*.

To ſay the truth, however, the creating of a new Writ, upon any new given caſe, is matter of more difficulty than the generality of Readers are aware of. The very importance which is thought to be in thoſe profeſſional forms of words, renders them really important. As every thing without them is illegal in a Court of Common Law, ſo with them every thing becomes legal, that is to ſay, they empower the Court legally to determine upon every kind of ſuit to which they are made to ſerve as introductors. The creating of a new Writ, therefore, amounts in its conſequences to the framing of a new law, and a law of a general nature too: now, the creating of ſuch a law, on the firſt appearance of a new caſe, which law afterwards is to be applied to all ſuch caſes as may be ſimilar to the firſt, is really matter of difficulty;

(a) *Parva baga, & Hanaperium*; the Petty-bag Office, and the Hanaper Office: the above two Latin words, it is not improper to obſerve, do not occur in Tully's works. To the care of the Petty-bag office thoſe writs are truſted in which the King's buſineſs is concerned; and to the Hanaper office, thoſe which relate to the Subject.

eſpecially, when Men are as yet in the dark as to the beſt kind of proviſion to be made for the caſe in queſtion, or even when it is not perhaps yet known whether it be proper to make any proviſion at all. The framing of a new Writ under ſuch circumſtances, is a meaſure on which Lawyers or Judges will not very willingly venture of themſelves, or apply to the Legiſlature for that purpoſe.

Owing to the above mentioned really great difficulty in creating new Writs on the one hand, and to the abſolute neceſſity of ſuch Writs in the Courts of Common Law on the other, many new ſpecies of claims and caſes (which are from time to time the unavoidable conſequences of the progreſs of trade and civilization) are left unprovided for, and remain like ſo many vacant ſpaces in the Law, or rather, like ſo many inacceſſible ſpots, which the laws in being cannot reach: now, this is a very great imperfection in the diſtribution of Juſtice, which ſhould be open to every individual, and provide remedies for every kind of claim which Men may ſet up againſt one another.

To remedy the above inconvenience, or rather in ſome degree to palliate it, law fictions have been reſorted to in the Engliſh law, by which Writs being warped from their actual meaning,

are made to extend to caſes to which they in no ſhape belong.

Law fictions of the kind we mention were not unknown to the old Roman Juriſconſults; and as an inſtance of their ingenuity in that reſpect, may be mentioned that kind of action, in which a Daughter was called a Son (*a*). Several inſtances might be quoted of the fictitious uſe of Writs in the Engliſh Courts of Common Law. A very remarkable expedient of that ſort occurs in the method generally uſed to ſue for the payment of certain kinds of debt, before the Court of Common Pleas, ſuch, if I am not miſtaken, as a ſalary for work done, indemnity for fulfilling orders received, &c. The Writ iſſued in thoſe caſes, is grounded on the ſuppoſition, that the perſon ſued has treſpaſſed on the ground of the Plaintiff, and broken by force of arms through his fences and incloſures; and under this predicament the Defendant is brought before the Court: this Writ, which has been that which Lawyers have found

(*a*) From the above inſtance it might be concluded that the Roman Juriſconſults were poſſeſſed of ſtill greater power than the Engliſh Parliament; for it is a fundamental principle with the Engliſh Lawyers, that Parliament can do every thing, *except* making a Woman a Man, or a Man a Woman.

of moſt convenient uſe, to introduce before a Court of Common Law the kinds of claim we mention, is called in technical language a *Clauſum fregit.*——In order to bring a perſon before the Court of King's Bench, to anſwer demands of much the ſame nature with thoſe above, a Writ, called a *Latitat,* is iſſued, in which it is taken for granted, that the Defendant inſidiouſly conceals himſelf, and is lurking in ſome County, different from that in which the Court is ſitting; the expreſſions uſed in the Writ being, that "he runs up and down and "ſecretes himſelf;" though no ſuch fact is ſeriouſly meant to be advanced either by the Attorney or the Party.

The ſame principle of ſtrict adherence to certain forms long ſince eſtabliſhed, has alſo cauſed Lawyers to introduce into their proceedings, fictitious names of perſons who are ſuppoſed to diſcharge the office of ſureties; and in certain caſes, it ſeems, the name of a fictitious perſon is introduced in a Writ along with that of the principal Defendant, as being joined in a common cauſe with him. Another inſtance of the ſame high regard of Lawyers, and Judges too, for certain old forms, which makes them more unwilling to depart from ſuch forms than from the truth itſelf of

facts, occurs in the above mentioned expedient uſed to bring ordinary cauſes before the Court of Exchequer, in order to be tried there at Common Law; which is, by making a declaration that the Plaintiff is a King's debtor, though neither the Court, nor the Plaintiff's Attorney, believe the aſſertion *(a)*.

CHAPTER XI.

The Subject continued. The Courts of Equity.

HOWEVER, there are limits to the law fictions and ſubtilties we mention; and the remedies of the Law cannot by their means be extended to all poſſible caſes that ariſe, unleſs too many abſurdities are ſuffered to be accumulated; nay, there have been inſtances in which the improper uſe of Writs in the Courts of Law has been checked by authority. In order therefore to remedy the inconveniencies we mention, that is, in order to extend the ad-

(a) The inhabitants of Bengal, and other Eaſt-India provinces, have been prodigiouſly ſurpriſed, it is ſaid, at the refinements and fictions of the Engliſh law, which was introduced among them a few years ago; and it is certainly not to be doubted that they may have been aſtoniſhed.

miniſtration of diſtributive Juſtice to all poſſible caſes, by freeing it from the profeſſional difficulties that have gradually grown up in its way, a new kind of Courts has been inſtituted in England, called *Courts of Equity*.

The generality of people, miſled by this word *Equity*, have conceived falſe notions of the office of the Courts we mention; and it ſeems to be generally thought that the Judges who ſit in them, are only to follow the rules of natural Equity; by which People appear to underſtand, that in a Court of Equity, the Judge may follow the dictates of his private feelings, and ground his deciſions on the peculiar circumſtances and ſituation of thoſe perſons who make their appearance before him. Nay, Doctor Johnſon, in his abridged Dictionary, gives the following definition of the power of the Court of Chancery conſidered as a Court of Equity: "The Chancellor hath power to "moderate and temper the written law, and "ſubjecteth himſelf only to the law of na-"ture and conſcience:" for which definition Dean Swift, and Cowell, who was a Lawyer, are quoted as authorities. Other inſtances might be produced of Lawyers who have been inaccurate in their definitions of the true office of the Judges of Equity. And the above named Doctor himſelf is on no ſubject a deſpicable authority.

Certainly the power of the Judges of Equity cannot be to alter, by their own private power, the Written Law, that is, Acts of Parliament, and thus to controul the Legiſlature. Their office only conſiſts, as will be proved in the ſequel, in providing remedies for thoſe caſes, for which the public good requires that remedies ſhould be provided, and in regard to which the Courts of Common Law, ſhackled by their original forms and inſtitutions, cannot procure any;—or in other words—the Courts of Equity have a power to adminiſter Juſtice to individuals, unreſtrained, not by the Law, but by the profeſſional law difficulties which Lawyers have from time to time contrived in the Courts of Common Law, and to which the Judges of thoſe Courts have given their ſanction.

An office of the kind here mentioned, was ſoon found neceſſary in Rome, for reaſons of the ſame nature with thoſe above delineated. For, it is remarkable enough, that the Body of Engliſh Lawyers, by refuſing admittance to the Code of Roman Laws, as it exiſted in the latter times of the Empire, have only ſubjected themſelves to the ſame difficulties under which the old Roman Juriſconſults laboured, during the time they were raiſing the ſtructure of thoſe ſame Laws. And it may alſo be obſerved, that the Engliſh Lawyers or Judges have fallen upon much the ſame expedients

as thoſe which the Roman Juriſconſults and Prætors had adopted.

This office of a Judge of *Equity*, was in time aſſumed by the Prætor in Rome, in addition to the judicial power he before poſſeſſed (*a*). At the beginning of the year for which he had been elected, the Prætor made a declaration of thoſe remedies for new difficult caſes, which he had determined to afford during the time of his Magiſtracy; in the choice of which he was no doubt directed, either by his own obſervations while out of office on the propriety of ſuch remedies, or by the ſuggeſtions of experienced Lawyers on the ſubject. This Declaration (*Edictum*) the Prætor produced *in albo*, as the expreſſion was. Modern Civilians have made many conjectures on the real meaning of the above words; one of their ſuppoſitions, which is as likely to be true as any other, is, that the Prætor's *Edictum*, or heads of new law remedies, were written on a whitened wall, by the ſide of his Tribunal.

Among the proviſions made by the Roman Prætors in their capacity of Judges of Equity,

(*a*) The Prætor thus poſſeſſed two diſtinct branches of judicial authority; in the ſame manner as the Court of Exchequer does in England, which occaſionally ſits as a Court of Common Law, and a Court of Equity.

may be mentioned thoſe which they introduced in favour of emancipated Sons, and of relations by the Women's ſide (*Cognati*), in regard to the right of inheriting. The former were ſuppoſed, by the Laws of the Twelve Tables, to have ceaſed to be the children of their Father, and as a conſequence, a legal claim was denied them on the paternal inheritance: the latter were taken no notice of in that article of the ſame laws which treated of the right of ſucceſſion, mention being only made of relations by the Men's ſide (*Agnati*). Thoſe the Prætor admitted, by the Edict *Unde Liberi*, to ſhare their Father's (or Grandfather's) inheritance along with their brothers; and theſe he put in poſſeſſion of the patrimony of a kinſman deceaſed, by means of the Edict *Unde Cognati*, when there were no relations by the Men's ſide. Theſe two kinds of inheritance were not however called *hæreditas*, but *bonorum poſſeſſio*; theſe words being very accurately diſtinguiſhed, though the effect was in the iſſue exactly the ſame.

In the ſame manner, the Laws of the twelve Tables had provided relief only for caſes of theft; and no mention was made in them of caſes of goods taken away by force (a deed which was not looked upon in ſo odious a light

at Rome as theft, which was conſidered as the peculiar guilt of ſlaves.) In proceſs of time the Prætor promiſed relief to ſuch perſons as might have their goods taken from them by open force, and gave them an action for the recovery of four times the value, againſt thoſe who had committed the fact with an evil intention. *Si cui dolo malo bona rapta eſſe dicentur, ei in quadruplum* JUDICIUM DABO.

Again, neither the Law of the Twelve Tables, nor the Laws made afterwards in the Aſſemblies of the People, had provided remedies except for very few caſes of fraud. Here the Prætor likewiſe intervened in his capacity of Judge of Equity, though ſo very late as the time of Cicero; and promiſed relief to defrauded perſons, in caſes in which the Laws in being afforded no action. *Quæ dolo malo facta eſſe dicentur, ſi de his rebus alia actio non erit, & juſta cauſa eſſe videbitur,* JUDICIUM DABO (*a*).

(*a*) At the ſame time the Prætor proffered a new Edict, he alſo made public thoſe peculiar formulæ by which the execution of the ſame was to be afterwards required from him. The name of that Prætor who firſt produced the Edict above-mentioned, was Aquilius, as we are informed by Cicero, in that elegant ſtory well known to Scholars, in which he relates the kind of fraud that was put upon Canius, a Roman Knight, when he purchaſed a pleaſure houſe and gardens, near Syra-

By Edicts of the ſame nature, Prætors in proceſs of time gave relief in certain caſes to married Women, and likewiſe to Minors (*Minoribus* XXV *annis ſuccurrit Prætor*, &c. (*b*).

The Courts of Equity eſtabliſhed in England, have in like manner provided remedies for a very great number of caſes, or ſpecies of

euſe. This account Cicero concludes with obſerving that Canius was left without remedy, "as Aquilius, his Col-"league and friend, had not yet publiſhed his for-"mulæ concerning fraud." *Quid enim faceret? nondum enim Aquilius, Collega & familiaris meus, protulerat de dolo malo formulas.* Off. III. 14.

(*b*) The Law Collection, or Syſtem, that was formed by the ſeries of Edicts publiſhed at different times by Prætors, was called *Jus Prætorium*, and alſo *Jus Honorarium (not ſtrictly binding)*. The Laws of the Twelve Tables, together with all ſuch other Laws as had at any time been paſſed in the Aſſembly of the People, were called by way of eminence, *Jus Civile*. The diſtinction was exactly of the ſame nature as that which takes place in England, between the Common and Statute Laws, and the law or practice of the Courts of Equity. The two branches of the Prætor's judicial office were very accurately diſtinguiſhed; and there was, beſides, this capital difference between the remedies or actions, he gave in his capacity of Judge of Civil Law, and thoſe in his capacity of Judge of Equity, that the former, being grounded on the *Jus Civile*, were perpetual; the latter muſt be preferred within the year, and were accordingly called *Actiones annuæ*, or *Actiones prætoriæ*; in the ſame manner as the former were called *Actiones civiles* or *Actiones perpetuæ*.

demands, for which the Courts of Common Law, cramped by their forms and peculiar law tenets, can afford none. Thus, the Courts of Equity may, in certain caſes, give actions for and againſt infants, notwithſtanding their minority—and for and againſt married Women, notwithſtanding their coverture. Married Women may even in certain caſes, ſue their huſbands before a Court of Equity. Executors may be made to pay intereſt for money that lies long in their hands. Courts of Equity may appoint Commiſſioners to hear the evidence of abſent witneſſes. When other proofs fail, they may impoſe an oath on either of the Parties; or, in the like caſe of a failure of proofs, they may compel a Trader to produce his books of trade. They may alſo confirm a title to land, though one has loſt his writings, &c. &c.

This power of the Courts of Equity in England, of which the Court of Chancery is the principal one, no doubt owes its origin to the power poſſeſſed by this latter of creating and iſſuing Writs. When new complicated caſes offered, for which a new kind of Writ was wanted, the Judges of Chancery, finding that it was neceſſary that juſtice ſhould be done, and at the ſame time, being unwilling to make general and perpetual proviſions on the caſes

before them by means of new Writs, commanded the appearance of both Parties, in order to procure as complete information as poſſible in regard to the circumſtances attending the caſe; and then they gave a decree upon the ſame, by way of experiment.

To beginnings and circumſtances like theſe, the Engliſh Courts of Equity, it is not to be doubted, owe their preſent exiſtence. In our days, when ſuch ſtrict notions are entertained concerning the power of Magiſtrates and Judges, it can ſcarcely be ſuppoſed that thoſe Courts, however uſeful, could gain admittance. Nor indeed, even in the times when they were inſtituted, were their proceedings free from oppoſition; and afterwards, ſo late as the reign of Queen Elizabeth, it was adjudged in the caſe of *Colleſton and Gardner*, that the killing a Sequeſtrator from the Court of Chancery, in the diſcharge of his buſineſs was no murder; which judgment could only be awarded on the ground that the Sequeſtrator's commiſſion, and conſequently the power of his Employers, were illegal (*a*). However the

(*a*) When Sir Edward Coke was Lord Chief Juſtice of the King's Bench, and Lord Elleſmere, Chancellor, during the reign of James I. a very ſerious quarrel alſo took place between the Courts of Law,

authority of the Courts of Equity has in proceſs of time become ſettled: one of the conſtituent branches of the Legiſlature even receives at preſent appeals from the decrees paſſed in thoſe Courts; and I have no doubt that ſeveral Acts of the whole Legiſlature might be produced, in which the office of thoſe Courts is openly acknowledged.

The kind of proceſs that has in time been eſtabliſhed in the Court of Chancery, is as follows. After a petition is received by the Court, the perſon ſued is ſerved with a writ of *Subpœna*, to command his appearance. If he does not appear, an attachment is iſſued againſt him; and if a *non inventus* is returned, a proclamation goes forth againſt him; then a commiſſion of rebellion is iſſued for apprehending him, and bringing him to the Fleet priſon. If the perſon ſued ſtands farther in contempt, a Serjeant at arms is to be ſent out to take him; and if he cannot be taken, a ſequeſtration of his land may be obtained till he appears. Such is the power which the Court of Chancery, as a Court of Equity, hath gradually acquired to compel appearance before it. In regard to the exe-

and thoſe of Equity, which is mentioned in B. iii. ch. 4. of Blackſtone's Commentaries; a work in which more might have been ſaid on the ſubject of the Courts of Equity.

cution of the Decrees it gives, it ſeems that Court has not been quite ſo ſucceſsful; at leaſt, thoſe Law-writers whoſe Works I have had an opportunity to ſee, hold it as a maxim, that the Court of Chancery cannot bind the eſtate, but only the perſon; and, as a conſequence, he who refuſes to ſubmit to its decree, is only to be confined to the Fleet priſon (*a*).

On this occaſion I ſhall obſerve, that the authority of the Lord Chancellor in England, in his capacity of a Judge of Equity, is much more narrowly limited than that which the Prætors in Rome had been able to aſſume. The Roman Prætors, we are to remark, united in themſelves the double office of deciding caſes according to the Civil Law (*Jus civile*) and to the Prætorian Law, or Law of Equity;

(*a*) The Court of Chancery was very likely the firſt inſtituted of the two Courts of Equity: as it was the Higheſt Court in the Kingdom, it was beſt able to begin the eſtabliſhment of an office, or power, which naturally gave riſe at firſt to ſo many objections. The Court of Exchequer, we may ſuppoſe, only followed the example of the Court of Chancery: in order the better to ſecure the new power it aſſumed, it even found it neceſſary to bring out the whole ſtrength it could muſter; and both the Treaſurer and the Chancellor of the Exchequer ſit (or are ſuppoſed to ſit) in the Court of Exchequer, when it is formed as a Court of Equity.

nor did there exiſt any other Court beſides their own, that might ſerve as a check upon them: hence it happened that their proceedings in the career of Equity, were very arbitrary indeed. In the firſt place, they did not uſe to make it any very ſtrict rule to adhere to the tenor of their own Edicts, during the whole year which their office laſted: they even aſſumed a power of altering them as they thought proper. To remedy ſo capital a defect in the diſtribution of Juſtice, a law was paſſed ſo late as the year of Rome 687 (not long before Tully's time), which was called *Lex Cornelia*, from the name of C. Cornelius, a Tribune of the People, who propounded it under the Conſulſhip of C. Piſo, and Man. Glabrio. By this Law it was enacted, that Prætors ſhould in future conſtantly decree according to their own Edicts, without altering anything in them during the whole year of their Prætorſhip. Some modern Civilians produce a certain Senatuſconſultum to the ſame effect, which, they ſay, had been paſſed a hundred years before; while others are of opinion that the ſame is not genuine: however, ſuppoſing it to be really ſo, the paſſing of the law we mention, ſhews that it had not been ſo well attended to, as it ought to have been.

Though the above mentioned arbitrary proceedings of Prætors were put a ſtop to, they ſtill retained another privilege, equally hurtful; which was, that every new Prætor, on his coming into office, had it in his power to retain only what part he pleaſed of the Edicts of his predeceſſors, and to reject the remainder: from which it followed, that the Prætorian Laws or Edicts, though providing for ſo great a number of important caſes, were really in force for only one year, the time of the duration of a Prætor's office *(a)*. Nor was a regulation made to remedy this capital defect in the Roman Juriſprudence, before the time of the Emperor Hadrian; which is another remarkable proof of the very great ſlowneſs with which uſeful public regulations take place in every Nation. Under the reign of the Emperor we mention, the moſt uſeful Edicts of former Prætors were by his order collected, or

(*a*) Thoſe Edicts of their predeceſſors in office, which the new Prætors thought proper to retain, were called *Edicta Tralatitia*; thoſe which they themſelves publiſhed (as alſo the alterations which they made in former ones) were called *Edicta Nova*. From the above mentioned power exerciſed by every new Prætor in turn, their Edicts were ſometimes diſtinguiſhed by the appellation of *Leges annuæ*. See Orat. in Ver. 1. 42.

rather compiled into one general Edict, which was thenceforwards to be obſerved by all civil Judges in their deciſions, and was accordingly called the perpetual Edict, (*perpetuum Edictum*). This Edict, though now loſt, ſoon grew into great repute; all the Juriſconſults of thoſe days vied with each other in writing commentaries upon it; and the Emperor himſelf thought it ſo glorious an act of his reign, to have cauſed the ſame to be framed, that he conſidered himſelf on that account as being another Numa (*a*).

(*a*) Several other more extenſive law compilations were framed after the perpetual Edict we mention; there having been a kind of emulation between the Roman Emperors, in regard to the improvement of the Law. At laſt, under the reign of Juſtinian, that celebrated Compilation was publiſhed, called the Code of Juſtinian, which, under different titles, compriſes the Roman Laws, the Edicts of the Prætors, together with the *reſcripts* of the Emperors; and an equal ſanction was given to the whole. This was an event of much the ſame nature as that which will take place in England, whenever a coalition ſhall be effected between the Courts of Common Law, and thoſe of Equity, and both ſhall thenceforwards be bound alike to frame their Judgments from the whole maſs of decided caſes and precedents then exiſting, at leaſt, of ſuch as it will be poſſible to bring conſiſtently together into one compilation.

But the Courts of Equity in England, notwithſtanding the extenſive juriſdiction they have been able in proceſs of time to aſſume, never ſuperſeded the other Courts of law. Thoſe Courts ſtill continue to exiſt in the ſame manner as formerly, and have proved a laſting check on the innovations, and in general the proceedings, of the Courts of Equity. And here we may remark the ſingular, and at the ſame time, effectual means of balancing each other's influence, reciprocally poſſeſſed by the Courts of the two different ſpecies. By means of its excluſive privilege both of creating and iſſuing writs, the Court of Chancery has been able to hinder the Courts of Common Law from arrogating to themſelves the cognizance of thoſe new caſes which were not provided for by any law in being, and thus dangerouſly uniting in themſelves the power of Judges of Equity with that of Judges of Common Law. On the other hand, the Courts of Common Law are alone inveſted with the power of puniſhing (or allowing damages for) thoſe caſes of violence by which the proceedings of the Courts of Equity might be oppoſed; and by that means they have been able to obſtruct the enterprizes of the latter, and prevent their effecting in themſelves the

like dangerous union of the two offices of Judges of Common Law and of Equity.

Owing to the ſituation of the Engliſh Courts of Equity, with reſpect to the Courts of Common Law, thoſe Courts have really been kept within limits that may be called exactly defined, if the nature of their functions be conſidered. In the firſt place, they can neither touch acts of Parliament, nor the eſtabliſhed practice of the other Courts, much leſs reverſe the judgments paſſed in theſe latter, as the Roman Prætors ſometimes uſed to do in regard to the deciſions of their predeceſſors in office, and ſometimes alſo in regard to their own. The Courts of Equity are even reſtrained from taking cognizance of any caſe for which the other Courts can poſſibly afford remedies. Nay, ſo ſtrenuouſly have the Courts of Common Law defended the verge of their frontier, that they have prevented the Courts of Equity from uſing in their proceedings the mode of Trial by a Jury; ſo that when in a caſe already begun to be taken cognizance of by the Court of Chancery, the Parties happen to join iſſue on any particular fact (the truth or falſehood of which a Jury is to determine) the Court of Chancery is obliged to deliver up the cauſe to the Court of King's Bench, there to

be finally decided (*a*). In fine, the example of the regularity of the proceedings practiſed in the Courts of Common Law, has been communicated to the Courts of Equity; and Rolls or Records are carefully kept in them of the pleadings, determinations, and acts of thoſe Courts, to ſerve as rules for future deciſions (*b*).

So far therefore from having it in his power "*to temper and moderate*," (that is, to alter) the Written Law or Statutes, a Judge of Equity we find, cannot alter the Unwritten Law, that is to ſay, the eſtabliſhed practice of the other Courts, and the judgments grounded thereupon—nor even can he meddle with thoſe caſes for which either the Written or Unwritten Law have already made general proviſions, and of which there is a poſſibility for the ordinary Courts of Law to take cognizance.

From all the above obſervations it follows, that, of the Courts of Equity as eſtabliſhed in England, the following definition may be given, which is, that they are a kind of *inferior*

(*a*) See Cunningham's and Jacob's Law Dictionaries, *paſſim*.

(*b*) The Maſter of the Rolls is the Keeper of thoſe records, as the title of this office expreſſes. His office in the Court of Chancery is of great importance, as he can hear and determine cauſes in the abſence of the Lord Chancellor.

experimental Legiſlature, continually employed in finding out and providing law remedies for thoſe new ſpecies of caſes for which neither the Courts of Common Law, nor the Legiſlature, have as yet found it convenient or practicable to eſtabliſh any. In doing which, they are to forbear to interfere with ſuch caſes as they find already provided for. A Judge of Equity is alſo to adhere in his deciſions, to the ſyſtem of decrees formerly paſſed in his own Court, regular records of which are kept for that purpoſe.

From the latter circumſtance it again follows, that a Judge of Equity, by the very exerciſe he makes of his power, is continually abridging the arbitrary part of it; as every new caſe he determines, every precedent he eſtabliſhes, becomes a land-mark or boundary, which both he and his ſucceſſors in office are afterwards expected to regard.

Here it may be added as a concluſion, that appeals from the Decrees paſſed in the Courts of Equity are carried to the Houſe of Peers; which bare circumſtance might ſuggeſt, that a Judge of Equity is ſubjected to certain poſitive rules, beſides thoſe "*of nature* "*and conſcience only*;" an appeal being naturally grounded on a ſuppoſition that ſome rules of that kind were neglected.

The above diſcuſſion on the Engliſh Law, has proved much longer than I intended at firſt; ſo much as to have ſwelled, I find, into two new additional Chapters. However, I confeſs I have been under the greater temptation to treat at ſome length the ſubject of the Courts of Equity, as I have found the error, (which may be called a conſtitutional one) concerning the arbitrary office of thoſe Courts, to be countenanced by the apparent authority of Lawyers, and of Men of abilities, at the ſame time that I have not ſeen in any book any attempt made profeſſedly to confute the ſame, nor indeed to point out the nature and true office of the Courts of Equity.

CHAPTER XII.

Of Criminal Juſtice.

WE are now to treat of an article, which, though it does not in England, and indeed ſhould not in any State, make part of the powers which are properly Conſtitutional, that is, of the reciprocal rights by means of which the Powers that concur to form the Government conſtantly balance each other, yet

eſſentially intereſts the ſecurity of Individuals, and, in the iſſue, the Conſtitution itſelf; I mean to ſpeak of Criminal Juſtice. But, previous to an expoſition of the laws of England on this head, it is neceſſary to deſire the Reader's attention to certain conſiderations.

When a Nation entruſts the power of the State to a certain number of perſons, or to one, it is with a view to two points: the one, to repel more effectually foreign attacks; the other, to maintain domeſtic tranquility.

To accompliſh the former point, each individual ſurrenders a ſhare of his property, and ſometimes, to a certain degree, even of his liberty. But, though the power of thoſe who are the Heads of the State may thereby be rendered very conſiderable, yet it cannot be ſaid, that liberty is, after all, in any high degree endangered, becauſe, ſhould ever the Executive Power turn againſt the Nation a ſtrength which ought to be employed ſolely for its defence, this Nation, if it were really free, by which I mean, unreſtrained by political prejudices, would be at no loſs for providing the means of its ſecurity.

In regard to the latter object, that is, the maintenance of domeſtic tranquility, every individual muſt, excluſive of new renunciations

of his natural liberty, moreover ſurrender, which is a matter of far more dangerous conſequence, a part of his perſonal ſecurity.

The Legiſlative power, being, from the nature of human affairs, placed in the alternative, either of expoſing individuals to dangers which it is at the ſame time able extremely to diminiſh, or of delivering up the State to the boundleſs calamities of violence and anarchy, finds itſelf compelled to reduce all its members within reach of the arm of the public Power, and, by withdrawing in ſuch caſes the benefit of the Social ſtrength, to leave them expoſed, bare, and defenceleſs, to the exertion of the comparatively immenſe power of the Executors of the laws.

Nor is this all; for, inſtead of that powerful re-action which the public authority ought in the former caſe to experience, here it muſt find none; and the law is obliged to proſcribe even the attempt of reſiſtance. It is therefore in regulating ſo dangerous a power, and in guarding, leſt it ſhould deviate from the real end of its inſtitution, that legiſlation ought to exhauſt all its efforts.

But here it is of great importanee to obſerve, that the more powers a Nation has reſetved to itſelf, and the more it limits the au-

thority of the Executors of the laws, the more induſtriouſly ought its precautions to be multiplied.

In a State where, from a ſeries of events, the will of the Prince has at length attained to hold the place of law, he ſpreads an univerſal oppreſſion, arbitrary and unreſiſted; even complaint is dumb; and the individual, undiſtinguiſhable by him, finds a kind of ſafety in his own inſignificance. With reſpect to the few who ſurround him, as they are at the ſame time the inſtruments of his greatneſs, they have nothing to dread but his momentary caprices; a danger againſt which, if there prevails a certain general mildneſs of manners, they are in a great meaſure ſecured.

But in a State where the Miniſters of the laws meet with obſtacles at every ſtep, even their ſtrongeſt paſſions are continually put in motion; and that portion of public authority, depoſited with them to be the inſtrument of national tranquility, eaſily becomes a moſt formidable weapon.

Let us begin with the moſt favourable ſuppoſition, and imagine a Prince whoſe intentions are in every caſe thoroughly upright; let us even ſuppoſe, that he never lends an ear to the ſuggeſtions of thoſe whoſe intereſt it is to deceive him; nevertheleſs, he will be ſubject

to error: and this error, which, I will farther allow, ſolely proceeds from his attachment to the public welfare, yet may very poſſibly happen to prompt him to act as if his views were directly oppoſite.

When opportunities ſhall offer (and many ſuch will occur) of procuring a public advantage by overleaping reſtraints, confident in the uprightneſs of his intentions, and being naturally not very earneſt to diſcover the diſtant evil conſequences of actions in which, from his very virtue, he feels a kind of complacency, he will not perceive, that, in aiming at a momentary advantage, he ſtrikes at the laws themſelves on which the ſafety of the Nation reſts, and that thoſe acts, ſo laudable when we only conſider the motive of them, make a breach at which tyranny will one day enter.

Yet farther, he will not even underſtand the complaints that will be made againſt him. To inſiſt upon them will appear to him to the laſt degree injurious: pride, when perhaps he is leaſt aware of it, will enter the liſts; what he began with calmneſs, he will proſecute with warmth; and if the laws ſhall not have taken every poſſible precaution, he may think he is acting a very honeſt part, while he treats as enemies of the State, Men

whoſe only crime will be that of being more ſagacious than himſelf, or of being in a better ſituation for judging of the reſults of meaſures.

But it were mightily to exalt human nature, to think that this caſe of a Prince, who never aims at augmenting his power, may in any ſhape be expected frequently to occur. Experience, on the contrary, evinces, that the happieſt diſpoſitions are not proof againſt the allurements of power, which has no charms but as it leads on to new advances: authority endures not the very idea of reſtraint; nor does it ceaſe to ſtruggle till it has beaten down every boundary.

Openly to level every barrier, at once to aſſume the abſolute Maſter, are, as we ſaid before, fruitleſs taſks. But it is here to be remembered, that thoſe powers of the people which are reſerved as a check upon the Sovereign, can only be effectual ſo far as they are brought into action by private individuals. Sometimes a Citizen, by the force and perſeverance of his complaints, opens the eyes of the Nation; at other times, ſome member of the Legiſlature propoſes a law for the removal of ſome public abuſe: theſe, therefore, will be the perſons againſt whom the Prince will direct all his efforts (*a*).

(*a*) By the word Prince, I mean thoſe who, under

And he will the more aſſuredly do ſo, as from the error ſo uſual among Men in power, he will think that the oppoſition he meets with, however general, wholly depends on the activity of but one or two leaders; and amidſt the calculations he will make, both of the ſuppoſed ſmallneſs of the obſtacle which offers to his view, and of the deciſive nature of the ſingle blow he thinks he needs to ſtrike, he will be urged on by the deſpair of ambition on the point of being baffled, and by the moſt violent of all hatreds, that which was preceded by contempt.

In that caſe which I am ſtill conſidering, of a really free Nation, the Sovereign muſt be very careful that military violence do not make the ſmalleſt part of his plan: a breach of the ſocial compact like this, added to the horror of the expedient, would infallibly endanger his whole authority. But, on the other hand, as he has reſolved to ſucceed, he will in defect of other reſources, try the utmoſt extent of the legal powers which the Conſtitution has intruſted with him; and if the laws have not in a manner provided for every poſſible caſe, he will avail himſelf of the imperfect precautions themſelves that have been taken, as a cover to his tyrannical proceedings; he

whatever appellation and in whatever Government it may be, are at the head of public affairs.

will purſue ſteadily his particular object, while his profeſſions breathe nothing but the general welfare, and deſtroy the aſſertors of the laws, under the very ſhelter of the forms contrived for their ſecurity *(a)*.

This is not all; independently of the immediate miſchief he may do, if the Legiſlature do not interpoſe in time, the blows will reach the Conſtitution itſelf; and the conſternation becoming general amongſt the People, each individual will find himſelf enſlaved in a State which yet may ſtill exhibit all the common appearances of liberty.

Not only, therefore, the ſafety of the individual, but that of the Nation itſelf, requires the utmoſt precautions in the eſtabliſhment of that neceſſary, but formidable, prerogative of diſpenſing puniſhments. The firſt to be taken, even without which it is impoſſible to avoid the dangers above ſuggeſted, is, that it never be left at the diſpoſal, nor, if it be poſſible, expoſed to the influence, of the Man who is the depoſitary of the public power.

(a) If there were any perſon who charged me with calumniating human Nature, for it is her alone I am accuſing here, I would deſire him to caſt his eyes on the Hiſtory of a Lewis XI.—of a *Richelieu*, and above all, on that of England before the Revolution: he would ſee the arts and activity of Government increaſe, in proportion as it gradually loſt its means of oppreſſion.

The next indiſpenſable precaution is, that neither ſhall this power be veſted in the legiſlative Body; and this precaution, ſo neceſſary alike under every mode of Government, becomes doubly ſo, when only a ſmall part of the Nation has a ſhare in the legiſlative power.

If the judicial authority were lodged in the legiſlative part of the People, not only the great inconvenience muſt enſue of its thus becoming independent, but alſo that worſt of evils, the ſuppreſſion of the ſole circumſtance that can well identify this part of the Nation with the whole, which is, a common ſubjection to the rules which they themſelves preſcribe. The legiſlative Body, which could not, without ruin to itſelf, eſtabliſh, openly and by direct laws, diſtinctions in favour of its Members, would introduce them by its judgments; and the People, in electing Repreſentatives, would give themſelves Maſters.

The judicial power ought therefore abſolutely to reſide in a ſubordinate and dependent body; dependent, not in its particular acts, with regard to which it ought to be a ſanctuary, but in its rules and in its forms, which the legiſlative authority muſt preſcribe. How is this body to be compoſed? In this reſpect farther precautions muſt be taken.

In a State where the Prince is abſolute

Maſter, numerous Bodies of Judges are moſt convenient, inaſmuch as they reſtrain, in a conſiderable degree, that reſpect of perſons which is one inevitable attendant on that mode of Government. Beſides, thoſe Bodies, whatever their outward privileges may be, being at bottom in a ſtate of great weakneſs, have no other means of acquiring the reſpect of the people than their integrity, and their conſtancy in obſerving certain rules and forms: nay, theſe circumſtances united, in ſome degree over-awe the Sovereign himſelf, and diſcourage the thoughts he might entertain of making them the tools of his caprices (*a*).

But, in an effectually limited Monarchy, that is, where the Prince is underſtood to be, and in fact is, ſubject to the laws, numerous

(*a*) The above obſervations are in a great meaſure meant to allude to the French *Parlemens*, and particularly that of Paris, the head of all the others, which forms ſuch a conſiderable Body as to have been once ſummoned as a fourth Order to the General Eſtates of the kingdom. The weight of that Body, increaſed by the circumſtance of the Members holding their places for life, has in general been attended with the advantage juſt mentioned, of placing them above being overawed by private individuals in the adminiſtration either of civil or criminal Juſtice; it has even rendered them ſo difficult to be managed by the Court, that the Miniſters have been at times obliged to appoint particular Judges, or *Commiſſaries*, to try ſuch Men as they had reſolved to ruin.

Bodies of Judicature would be repugnant to the ſpirit of the Conſtitution, which requires, that all powers in the State ſhould be as much confined as the end of their inſtitution can allow; not to add, that in the viciſſitudes incident to ſuch a State, they might exert a very dangerous influence.

Beſides, that awe which is naturally inſpired by ſuch Bodies, and is ſo uſeful when it is neceſſary to ſtrengthen the feebleneſs of the laws, would not only be ſuperfluous in a State where the whole power of the Nation is on their ſide, but would moreover have the miſchievous tendency to introduce another ſort of fear than that which Men muſt be taught to entertain. Thoſe mighty Tribunals, I am willing to ſuppoſe, would preſerve, in all ſituations of affairs, that integrity which diſtinguiſhes them in States of a different Conſtitution; they would never inquire after the influence, ſtill leſs the political ſentiments, of thoſe whoſe fate they

Theſe, however, are only local advantages, and relative to the nature of the French Government, which is an uncontrouled Monarchy, with conſiderable remains of Ariſtocracy. But in a free State, ſuch a powerful Body of Men, veſted with the power of deciding on the life, honour, and property, of the Citizens, would, as will be preſently ſhewn, be productive of very dangerous political conſequences; and the more ſo, if ſuch Judges had, as is the caſe all over the world, except here, the power of deciding upon the matter of law, and the matter of fact.

were called to decide; but theſe advantages not being founded in the neceſſity of things, and the power of ſuch Judges ſeeming to exempt them from being ſo very virtuous, Men would be in danger of taking up the fatal opinion, that the ſimple exact obſervance of the laws is not the only taſk of prudence: the Citizen called upon to defend, in the ſphere where fortune has placed him, his own rights, and thoſe of the Nation itſelf, would dread the conſequences of even a lawful conduct, and though encouraged by the law, might deſert himſelf when he came to behold its Miniſters.

In the aſſembly of thoſe who ſit as his Judges, the Citizen might poſſibly deſcry no enemies; but neither would he ſee any Man whom a ſimilarity of circumſtances might engage to take a concern in his fate: and their rank, eſpecially when joined with their numbers, would appear to him, to lift them above that which over-awes injuſtice, where the law has been unable to ſecure any other check, I mean the reproaches of the Public.

And theſe his fears would be conſiderably heightened, if, by an admiſſion of the Juriſprudence received among certain Nations, he beheld thoſe Tribunals, already ſo formidable,

wrap themſelves up in myſtery, and be made, as it were, inacceſſible *(a)*.

He could not think, without diſmay, of thoſe vaſt priſons within which he is one day perhaps to be immured—of thoſe proceedings, unknown to him, through which he is to paſs—of that total ſecluſion from the ſociety of other Men—or of thoſe long and ſecret examinations, in which, abandoned wholly to himſelf, he will have nothing but a paſſive defence to oppoſe to the artfully varied queſtions of Men whoſe intentions he ſhall at leaſt

(a) An alluſion is made here to the ſecrecy with which the proceedings, in the adminiſtration of criminal Juſtice, are to be carried on, according to the rules of the civil law, which in that reſpect are adopted over all Europe. As ſoon as the priſoner is committed, he is debarred of the ſight of every body, till he has gone through his ſeveral examinations. One or two Judges are appointed to examine him, with a Clerk to take his anſwers in writing; and he ſtands alone before them in ſome private room in the priſon. The witneſſes are to be examined apart, and he is not admitted to ſee them till their evidence is cloſed: they are then *confronted* together before all the Judges, to the end that the witneſſes may ſee if the priſoner is really the Man they meant in giving their reſpective evidences, and that the priſoner may object to ſuch of them as he ſhall think proper. This done, the depoſitions of thoſe witneſſes who are adjudged upon trial to be exceptionable, are ſet aſide: the depoſitions of the others are to be laid before the Judges, as well as the anſwers of the priſoner, who has

miſtruſt, and in which, his ſpirits broken down by ſolitude, ſhall receive no ſupport, either from the counſels of his friends, or the looks of thoſe who ſhall offer up vows for his deliverance.

The ſecurity of the individual, and the conſciouſneſs of that ſecurity, being then equally eſſential to the enjoyment of liberty, and neceſſary for the preſervation of it, theſe two points muſt never be left out of ſight in the eſtabliſhment of a judicial power; and I conceive that they neceſſarily lead to the following maxims.

been previouſly called upon to confirm or deny them in their preſence; and a copy of the whole is delivered to him, that he may, with the aſſiſtance of a Counſel, which is now granted him, prepare for his juſtification. The judges are, as has been ſaid before, to decide both upon the matter of law and the matter of fact, as well as upon all incidents that may ariſe during the courſe of the proceedings, ſuch as admitting witneſſes to be heard in behalf of the priſoner, &c.

This mode of criminal Judicature may be uſeful as to the bare diſcovering of truth, a thing which I do not propoſe to diſcuſs here; but, at the ſame time, a priſoner is ſo completely delivered up into the hands of the Judges, who even can detain him almoſt at pleaſure by multiplying or delaying his examinations, that, whenever it is adopted, Men are almoſt as much afraid of being accuſed, as of being guilty, and eſpecially grow very cautious how they interfere in public matters. We ſhall ſee preſently how the Trial by Jury, peculiar to the Engliſh Nation, is admirably adapted to the nature of a free State.

In the firſt place I ſhall remind the reader of what has been laid down above, that the judicial authority ought never to reſide in an independent Body; ſtill leſs in him who is already the truſtee of the executive power.

Secondly, the party accuſed ought to be provided with every poſſible means of defence. Above all things, the whole proceedings ought to be public. The Courts, and their different forms, muſt be ſuch as to inſpire reſpect, but never terror; and the caſes ought to be ſo accurately aſcertained, the limits ſo clearly marked, as that neither the executive power, nor the Judges, may ever hope to tranſgreſs them with impunity.

In fine, ſince we muſt abſolutely pay a price for the advantage of living in ſociety, not only by relinquiſhing ſome ſhare of our natural liberty (a ſurrender which, in a wiſely framed Government, a wiſe Man will make without reluctance) but even alſo by reſigning part of even our perſonal ſecurity; in a word, ſince all judicial power is an evil, though a neceſſary one, no care ſhould be omitted to reduce as far as poſſible the dangers of it.

And as there is however a period at which the prudence of Man muſt ſtop, at which the ſafety of the individual muſt be given up,

and the law is to reſign him over to the judgment of a few perſons, that is, to ſpeak plainly, to a deciſion in ſome ſenſe arbitrary, it is neceſſary that this law ſhould narrow as far as poſſible this ſphere of peril, and ſo order matters, that when the ſubject ſhall happen to be ſummoned to the deciſion of his fate by the fallible conſcience of a few of his fellow-creatures, he may always find in them advocates, and never adverſaries.

CHAP. XIII.

The Subject continued.

AFTER having offered to the reader, in the preceding Chapter, ſuch general conſiderations as I thought neceſſary, in order to convey a juſter idea of the ſpirit of the criminal Judicature in England, and of the advantages peculiar to it, I now proceed to exhibit the particulars.

When a perſon is charged with a crime, the Magiſtrate, who is called in England *a Juſtice of the Peace*, iſſues a warrant to apprehend him; but this warrant can be no more than an order for bringing the party before him: he muſt then hear him, and take down in writ-

ing his anſwers, together with the different informations. If it appears on this examination, either that the crime laid to the charge of the perſon who is brought before the Juſtice, was not committed, or that there is no juſt ground to ſuſpect him of it, he muſt be ſet abſolutely at liberty: if the contrary reſults from the examination, the party accuſed muſt give bail for his appearance to anſwer to the charge; unleſs in capital caſes, for then he muſt, for ſafer cuſtody, be really committed to priſon, in order to take his trial at the next Seſſions.

But this precaution of requiring the examination of an accuſed perſon, previous to his impriſonment, is not the only care which the law has taken in his behalf; it has farther ordained that the accuſation againſt him ſhould be again diſcuſſed, before he can be expoſed to the danger of a trial. At every ſeſſion the Sheriff appoints what is called the *Grand Jury*. This Aſſembly muſt be compoſed of more than twelve Men, and leſs than twenty-four; and is always formed out of the moſt conſiderable perſons in the County. Its function is to examine the evidence that has been given in ſupport of every charge: if twelve of thoſe perſons do not concur in

the opinion that an accuſation is well grounded, the party is immediately diſcharged; if, on the contrary, twelve of the grand Jury find the proofs ſufficient, the priſoner is ſaid to be indicted, and is detained in order to go through the remaining proceedings.

On the day appointed for his Trial, the priſoner is brought to the bar of the Court, where the Judge, after cauſing the bill of indictment to be read in his preſence, muſt aſk him how he will be tried: to which the priſoner anſwers, *by God and my Country*; by which he is underſtood to claim to be tried by a Jury, and to have all the judicial means of defence to which the law intitles him. The Sheriff then appoints what is called the Petty Jury: this muſt be compoſed of twelve Men, choſen of the County where the crime was committed, and poſſeſſed of a landed income of ten pounds by the year: their declaration finally decides on the truth or falſhood of the accuſation.

As the fate of the priſoner thus entirely depends on the Men who compoſe this Jury, Juſtice requires that he ſhould have a ſhare in the choice of them; and this he has through the extenſive right which the law has granted him, of challenging, or objecting to, ſuch of them as he may think exceptionable.

Theſe challenges are of two kinds. The firſt, which is called the challenge to the *array*, has for its object to have the whole pannel ſet aſide: it is propoſed by the priſoner when he thinks that the Sheriff who formed the pannel is not indifferent in the cauſe; for inſtance, if he thinks he has an intereſt in the proſecution, that he is related to the proſecutor, or in general to the party who pretends to be injured.

The ſecond kind of challenges are called, to the Polls, *(in capita)*: they are exceptions propoſed againſt the Jurors, ſeverally, and are reduced to four heads by Sir Edward Coke. That which he calls *propter honoris reſpectum*, may be propoſed againſt a Lord impannelled on a jury; or he might challenge himſelf. That *propter defectum* takes place when a Juror is legally incapable of ſerving that office, as, if he was an alien; if he had not an eſtate ſufficient to qualify him, &c. That *propter delictum* has for its object to ſet aſide any Juror convicted of ſuch crime or miſdemeanor as renders him infamous, as felony, perjury, &c. That *propter affectum* is propoſed againſt a Juror who has an intereſt in the conviction of the priſoner: he, for inſtance, who has an action depending between him and the priſoner; he who is of kin to the proſecutor, or

his counſel, attorney, or of the ſame ſociety or corporation with him, &c. (*a*).

In fine, in order to relieve even the imagination of the priſoner, the law allows him, independently of the ſeveral challenges above mentioned, to challenge peremptorily, that is to ſay, without ſhewing any cauſe, twenty Jurors ſucceſſively (*b*).

When at length the Jury is formed, and they have taken their oath, the indictment is opened, and the proſecutor produces the proofs of his accuſation. But, unlike to the rules of the Civil Law, the witneſſes deliver their evidence in the preſence of the priſoner; the latter may put queſtions to them; he may alſo produce witneſſes in his behalf, and have them examined upon oath. Laſtly, he is allowed to have a Counſel to aſſiſt him, not only in the diſcuſſion of any point of law which may be complicated with the fact, but alſo in the inveſtigation of the fact itſelf, and

(*a*) When the priſoner is an alien, one half of the Jurors muſt alſo be aliens; a Jury thus formed is called a Jury *de medietate linguæ*.

(*b*) When thoſe ſeveral challenges reduce too much the number of Jurors on the pannel, which is forty-eight, new ones are named on a writ of the Judge, who are named the *Tales*, from thoſe words of the writ, *decem* or *octo tales*.

who points out to him the queſtions he ought to aſk, or even aſks them for him *(a)*.

Such are the precautions which the law has deviſed for caſes of common proſecutions; but in thoſe for High Treaſon, and for miſpriſion of treaſon, that is to ſay, for a conſpiracy againſt the life of the King, or againſt the State, and for a concealment of it *(b)*, accuſations which ſuppoſe a heat of party and powerful accuſers, the law has provided for the accuſed party farther ſafe-guards.

Firſt, no perſon can be queſtioned for any treaſon, except a direct attempt on the life of the King, after three years elapſed ſince the offence. 2°. The accuſed party may, independently of his other legal grounds of challenging, *peremptorily* challenge thirty-five Jurors. 3°. He may have two Counſel to aſſiſt him through the whole courſe of the proceedings. 4°. That his witneſſes may not be kept away, the Judges muſt grant him the ſame compulſive proceſs to bring them in, which they iſſue to compel the evidences againſt him. 5°. A copy of his indictment muſt be delivered

(a) This laſt article however is not eſtabliſhed by law, except in caſes of treaſon; it is done only through cuſtom and the indulgence of the Judges.

(b) The penalty of a miſpriſion of treaſon is, the forfeiture of all goods, and impriſonment for life.

to him ten days at leaſt before the trial, in preſence of two witneſſes, and at the expence of five ſhillings; which copy muſt contain all the facts laid to his charge, the names, profeſſions, and abodes, of the Jurors who are to be on the pannel, and of all the witneſſes who are intended to be produced againſt him (*a*).

When, either in caſes of high treaſon, or of inferior crimes, the proſecutor and the priſoner have cloſed their evidence, and the witneſſes have anſwered to the reſpective queſtions both of the Bench, and of the Jurors, one of the Judges makes a ſpeech, in which he ſums up the facts which have been advanced on both ſides. He points out to the Jury what more preciſely conſtitutes the hinge of the queſtion before them; and he gives them his opinion, both with regard to the evidences that have been given, and to the point of law which is to guide them in their deciſion. This done, the Jury withdraw into an adjoining room, where they muſt remain without eating and drinking, and without fire, till they have agreed unanimouſly among themſelves, unleſs the Court give a permiſſion to the contrary. Their decla-

(*a*) Stat. 7 Will. III. c. 3. and 7 Ann. c. 21. The latter was to be in force only after the death of the late Pretender.

ration or verdict (*veredictum*) muſt (unleſs they chooſe to give a ſpecial verdict) pronounce expreſsly, either that the priſoner is guilty, or that he is not guilty, of the fact laid to his charge. Laſtly, the fundamental maxim of this mode of proceeding, is, that the Jury muſt be unanimous.

And as the main object of the inſtitution of the Trial by a Jury is to guard accuſed perſons againſt all deciſions whatſoever by Men inveſted with any permanent official authority *(a)*, it is not only a ſettled principle, that the opinion which the Judge delivers has no weight but ſuch as the Jury chooſe to give it, but their verdict muſt beſides comprehend the whole matter in trial, and decide as well upon the fact, as upon the point of law that may ariſe out of it: in other words, they muſt pronounce both on the commiſſion of a certain fact, and on the reaſon which makes ſuch fact to be contrary to law (*b*).

(a) "Laws," as *Junius* ſays extremely well, "are "intended, not to truſt to what Men will do, but to "guard againſt what they may do."

(*b*) Unleſs they chooſe to give a *ſpecial* verdict.—"When the Jury," ſays Coke, "doubt of the law, and "intend to do that which is juſt, they find the *ſpecial* "matter, and the entry is, *Et ſuper totâ materiâ petunt* "*diſcretionem Juſticiariorum.*" Inſt. iv. p. 41.—Theſe words of Coke, we may obſerve, confirm beyond a doubt the power of the Jury to determine on the

This is even ſo eſſential a point, that a bill of indictment muſt expreſsly be grounded upon thoſe two objects. Thus, an indictment for treaſon muſt charge, that the alledged facts were committed with a treaſonable intent (*proditorie*). An indictment for murder muſt expreſs, that the fact has been committed with *malice prepenſe*, or aforethought. An indictment for robbery muſt charge, that things were taken with an intention to rob, (*animo furandi*) &c. &c (*a*).

Juries are even ſo uncontrolable in their verdict, ſo apprehenſive has the Conſtitution been, leſt precautions to reſtrain them in the exerciſe of their function, however ſpecious in the beginning, might in the iſſue be converted

whole matter in trial: a power which in all conſtitutional views is neceſſary; and the more ſo, ſince a priſoner cannot in England challenge the Judge, as he can under the Civil Law, land for the ſame cauſes as he can a witneſs.

(*a*) The principle that a Jury is to decide both on the fact and the *criminality* of it, is ſo well underſtood, that if a verdict were ſo framed as only to have for its object the bare exiſtence of the fact laid to the charge of the priſoner, no puniſhment could be awarded by the Judge in conſequence of it. Thus, in the proſecution of Woodfall, for printing Junius's letter to the King, the Jury brought in the following verdict, *guilty of printing and publiſhing, only*; the conſequence of which was the diſcharge of the priſoner.

to the very deſtruction of the ends of that inſtitution, that it is a repeated principle, that a Juror, in delivering his opinion, is to have no other rule but his opinion itſelf; that is to ſay, no other rule than the belief which reſults to his mind from the facts alledged on both ſides, from their probability, from the credibility of the witneſſes, and even from all ſuch circumſtances as he may have a private knowledge of. Lord Chief Juſtice Hale expreſſes himſelf on this ſubject, in the following terms, in his Hiſtory of the Common Law of England, chap. 12. § 11.

" In this receſs of the Jury, they are to " conſider their evidence; to weigh the credi- " bility of the witneſſes, and the force and " efficacy of their teſtimonies; wherein (as I " before ſaid) they are not preciſely bound to " the rules of the Civil Law, viz. to have " two witneſſes to prove every fact, unleſs it " be in caſes of treaſon, nor to reject one " witneſs becauſe he is ſingle, or always to " believe two witneſſes, if the probability " of the fact does upon other circumſtances " reaſonably encounter them; for the Trial " is not here ſimply by witneſſes, but *by* " *Jury*: nay, it may ſo fall out, that a Jury " upon their own knowledge may know a

"thing to be falſe that a witneſs ſwore to be "true, or may know a witneſs to be incom- "petent or incredible, though nothing be "objected againſt him—and may give their "verdict accordingly *(a)*."

If the verdict pronounces *not guilty*, the priſoner is ſet at liberty, and cannot, on any pretence, be tried again for the ſame offence. If the verdict declares him *guilty*, then, and not till then, the Judge enters upon his function as a Judge, and pronounces the puniſhment which the law appoints *(b)*. But, even in this caſe, he is not to judge according to his own

(a) The ſame principles and forms are obſerved in civil matters; only peremptory challenges are not allowed.

(b) When the party accuſed is one of the Lords temporal, he likewiſe enjoys the univerſal privilege of being judged by his Peers; though the Trial then differs in ſeveral reſpects. In the firſt place, as to the number of the Jurors: all the Peers are to perform the function of ſuch, and they muſt be ſummoned at leaſt twenty days beforehand. II. When the Trial takes place during the ſeſſion, it is ſaid to be in the *High Court of Parliament*; and the Peers officiate at once as Jurors and Judges: when the Parliament is not ſitting, the Trial is ſaid to be in the court of the *High Steward of England*; an office which is not uſually in being, but is revived on thoſe occaſions; and the High Steward performs the office of Judge. III. In either of theſe caſes, unanimity is not required; and the majority, which muſt conſiſt of twelve perſons at leaſt, is to decide.

diſcretion only; he muſt ſtrictly adhere to the letter of the law; no conſtructive extenſion can be admitted; and however criminal a fact might in itſelf be, it would paſs unpuniſhed if it were found not to be poſitively comprehended in ſome one of the caſes provided for by the law. The evil that may ariſe from the impunity of a crime, that is, an evil which a new law may inſtantly ſtop, has not by the Engliſh laws been conſidered as of magnitude ſufficient to be put in compariſon with the danger of breaking through a barrier on which ſo mightily depends the ſafety of the individual *(a)*.

To all theſe precautions taken by the law for the ſafety of the Subject, one circumſtance muſt be added, which indeed would alone juſtify the partiality of the Engliſh Lawyers to their laws in preference to the Civil Law; I mean the abſolute rejection they have made of

(*a*) I ſhall give here an inſtance of the ſcruple with which the Engliſh Judges proceed upon occaſions of this kind. Sir *Henry Ferrers* having been arreſted by virtue of a warrant, in which he was termed a *Knight*, though he was a Baronet, Nightingale his ſervant took his part, and killed the Officer; but it was decided, that as the Warrant "was an ill Warrant, the killing "an Officer in executing that Warrant, cannot be "murder, becauſe no good Warrant: wherefore he was "found not guilty of the murder and manſlaughter."—See Croke's Rep. P. III. p. 371.

torture *(a)*. Without repeating here what has been ſaid on this ſubject by the admirable Author of the Treatiſe on *Crimes and Puniſhments*, I ſhall only obſerve, that the torture, in itſelf ſo horrible an expedient, would, more eſpecially in a free State, be attended with the moſt fatal conſequences. It was abſolutely neceſſary to preclude, by rejecting it, all attempts to make the purſuit of guilt an inſtrument of vengeance againſt the innocent. Even the convicted criminal muſt be ſpared, and a practice at all rates exploded, which might ſo eaſily be made an inſtrument of endleſs vexation and perſecution *(b)*.

(*a*) Coke ſays (Inſt. III. p. 35.) that when John Holland, Duke of Exeter, and William de la Poole, Duke of Suffolk, renewed, under Henry VI. the attempts made to introduce the Civil Law, they exhibited the torture as a *beginning thereof*. The inſtrument was called the Duke of Exeter's daughter.

(b) Judge Foſter relates, from Whitlock, that the Biſhop of London having ſaid to Felton, who had aſſaſſinated the Duke of Buckingham, "If you will not "confeſs, you *muſt go the Rack*;" the Man replied, "If it muſt be ſo, I know not whom I may accuſe in "the extremity of the torture; Biſhop Laud perhaps, "or any Lord at this Board."

"Sound ſenſe, (adds Foſter) in the mouth of an "Enthuſiaſt and a Ruffian!"

Laud having propoſed the Rack, the matter was ſhortly debated at the Board, and it ended in a reference to the Judges, who unanimouſly reſolved that the Rack could not be legally uſed.

For the farther prevention of abuſes, it is an invariable uſage, that the trial be public. The priſoner neither makes his appearance, nor pleads, but in places where every body may have free entrance; and the witneſſes when they give their evidence, the Judge when he delivers his opinion, the Jury when they give their verdict, are all under the public eye. Laſtly, the Judge cannot change either the place or the kind of puniſhment preſcribed by legal ſentence; and a Sheriff who ſhould take away the life of a Man in a manner different from that which the law preſcribes, would be proſecuted as guilty of murder *(a)*.

In a word, the Conſtitution of England being a free Conſtitution, demanded from that circumſtance alone (as I ſhould already have but too often repeated, if ſo fundamental a truth could be too often urged) extraordinary precautions to guard againſt the dangers which unavoidably attend the Power of inflicting puniſhments; and it is particularly when conſidered in this light, that the Trial by Jury proves an admirable inſtitution.

(a) And if any other perſon but the Sheriff, even the Judge himſelf, were to cauſe death to be inflicted upon a Man, though convicted, it would be deemed an homicide.—See Blackſtone, book iv. ch. 14.

By means of it, the Judicial Authority is not only placed out of the hands of the Man who is veſted with the Executive Authority—it is even out of the hands of the Judge himſelf. Not only, the perſon who is truſted with the public power cannot exert it, till he has as it were received the permiſſion to that purpoſe, of thoſe who are ſet apart to adminiſter the laws; but theſe latter are alſo reſtrained in a manner exactly alike, and cannot make the law ſpeak, but when, in their turn, they have likewiſe received permiſſion.

And thoſe perſons to whom the law has thus excluſively delegated the prerogative of deciding that a puniſhment is to be inflicted,—thoſe Men without whoſe declaration the Executive and the Judicial Powers are both thus bound down to inaction, do not form among themſelves a permanent Body, who may have had time to ſtudy how their power can ſerve to promote their private views: they are Men ſelected at once from among the people, who perhaps never were before called to the exerciſe of ſuch a function, nor foreſee that they ever ſhall be called to it again.

As the extenſive right of challenging, effectually baffles, on the one hand, the ſecret prac-

tices of ſuch as, in the face of ſo many diſcouragements, might ſtill endeavour to make the Judicial Power ſubſervient to their own views, and on the other excludes all perſonal reſentments, the ſole affection which remains to influence the integrity of thoſe who alone are intitled to put the public power into action, during the ſhort period of their authority, is, that their own fate as ſubjects, is eſſentially connected with that of the Man whoſe doom they are going to decide.

In fine, ſuch is the happy nature of this inſtitution, that the Judicial Power, a power ſo formidable in itſelf, which is to diſpoſe without finding any reſiſtance, of the property, honour, and life of individuals, and which, whatever precautions may be taken to reſtrain it, muſt in a great degree remain arbitrary, may be ſaid in England, to exiſt,—to accompliſh every intended end,—and to be in the hands of nobody *(a)*.

In all theſe obſervations on the advantages

(a) The conſequence of this Inſtitution is, that no Man in England ever meets the Man of whom we may ſay, "That Man has a power to decide on my death "or life." If we could for a moment forget the advantages of that Inſtitution, we ought at leaſt to admire the ingenuity of it.

of the Engliſh criminal laws, I have only conſidered it as connected with the Conſtitution, which is a free one; and it is in this view alone that I have compared it with the Juriſprudence received in other States. Yet, abſtractedly from the weighty conſtitutional conſiderations which I have ſuggeſted, I think there are ſtill other intereſting grounds of pre-eminence on the ſide of the laws of England.

They do not permit, that a Man ſhould be made to run the riſque of a trial, but upon the declaration of twelve perſons at leaſt, (*the Grand Jury*). Whether he be in priſon, or on his Trial, they never for an inſtant refuſe free acceſs to thoſe who have either advice, or comfort, to give him: they even allow him to ſummon all who may have any thing to ſay in his favour. Laſtly, what is of very great importance, the witneſſes againſt him muſt deliver their teſtimony in his preſence; he may croſs-examine them; and, by one unexpected queſtion, confound a whole ſyſtem of calumny: indulgences theſe, all denied by the laws of other Countries.

Hence, though an accuſed perſon may be expoſed to have his fate decided by perſons (*the Petty Jury*) who poſſeſs not, perhaps, all

that ſagacity which in ſome delicate caſes it is particularly advantageous to meet with in a Judge, yet this inconvenience is amply compenſated by the extenſive means of defence with which the law, as we have ſeen, has provided him. If a Juryman does not poſſeſs that expertneſs which is the reſult of long practice, yet neither does he bring to judgment that hardneſs of heart which is, more or leſs, alſo, a conſequence of it; and bearing about him the principles, let me ſay, the unimpaired inſtinct of humanity, he trembles while he exerciſes the awful office to which he finds himſelf called, and in doubtful caſes always decides for mercy.

It is to be farther obſerved, that in the uſual courſe of things, the Juries pay great regard to the opinions delivered by the Judges: that in thoſe caſes where they are clear as to the fact, yet find themſelves perplexed with regard to the degree of guilt connected with it, they leave it, as has been ſaid before, to be aſcertained by the diſcretion of the Judge, by returning what is called a *Special Verdict*: that whenever circumſtances ſeem to alleviate the guilt of a perſon, againſt whom nevertheleſs the proof has been poſitive, they temper their verdict by recommending him to the mercy

of the King; which ſeldom fails to produce at leaſt a mitigation of the puniſhment: that, though a Man, once acquitted, can never under any pretence whatſoever, be again brought into peril for the ſame offence, yet a new Trial would be granted, if he had been found guilty upon proofs ſtrongly ſuſpected of being falſe (Blackſt. b. iv. c. 27.) Laſtly, what diſtinguiſhes the laws of England from thoſe of other Countries in a very honourable manner, is, that as the torture is unknown to them, ſo neither do they know any more grievous puniſhment than the ſimple deprivation of life.

All theſe circumſtances have combined to introduce ſuch a mildneſs into the exerciſe of criminal Juſtice, that the Trial by Jury is that point of their liberty to which the people of England are moſt thoroughly and univerſally wedded; and the only complaint I have ever heard uttered againſt it, has been by Men, who, more ſenſible of the neceſſity of public order, than alive to the feelings of humanity, think that too many offenders eſcape with impunity.

CHAP. XIV.

The Subject concluded.—Laws relative to Impriſonment.

BUT what completes the ſenſe of independence, which the laws of England procure to every individual (a ſenſe which is the nobleſt advantage attendant on liberty), is the greatneſs of their precautions upon the delicate point of Impriſonment.

In the firſt place, by allowing, in moſt caſes, of enlargement upon bail, and by preſcribing, on that article, expreſs rules for the Judges to follow, they have removed all pretexts which circumſtances might afford of depriving a man of his liberty.

But it is againſt the Executive Power that the Legiſlature has, above all, directed its efforts: nor has it been but by ſlow degrees, that it has been enabled to wreſt from it a branch of power, which enabled it to deprive the people of their Leaders, as well as to intimidate thoſe who might be tempted to

aſſume the function; and which, having thus all the efficacy of more odious means without the dangers of them, was the moſt formidable weapon with which it might attack public liberty.

The methods originally pointed out by the laws of England for the enlargement of a perſon unjuſtly impriſoned, were the writs of *mainprize*, *de odio & atiâ*, and *de homine replegiando*. Thoſe writs, which could not be refuſed, were an order to the Sheriff of the County in which a perſon had been confined, to inquire into the cauſes of his confinement; and, according to the circumſtances of his caſe, either to diſcharge him purely and ſimply, or upon bail.

But the moſt uſeful method, and which even, by being moſt general and certain, has tacitly aboliſhed all the others, is the writ of *Habeas Corpus*, ſo called becauſe it begins with the words *Habeas corpus ad ſubjiciendum*. This writ, being a writ of high prerogative, muſt iſſue from the Court of King's Bench: its effects extended equally over every County; and the King by it required, or was underſtood to require, the perſon who held one of his ſubjects in cuſtody, to carry him before the Judge, with the date of the confinement,

and the cauſe of it, in order to diſcharge him, or continue to detain him, according as the Judge ſhall decree.

But this writ, which might be a reſource in caſes of violent impriſonment effected by individuals, or granted at their requeſt, was but a feeble one, or rather was no reſource at all, againſt the prerogative of the Prince, eſpecially under the reigns of the Tudors, and in the beginning of thoſe of the Stuarts. And even in the firſt years of Charles the Firſt, the Judges of the King's Bench, who in conſequence of the ſpirit of the times, and of their holding their places *durante bene placito*, were conſtantly devoted to the Court, declared, "that they "could not, upon a *habeas corpus*, either bail "or deliver a priſoner, though committed "without any cauſe aſſigned, in caſe he was "committed by the ſpecial command of the "King, or by the Lords of the Privy Coun-"cil."

Thoſe principles, and the mode of procedure which reſulted from them, attracted the attention of Parliament; and in the Act called the Petition of Right, paſſed in the third year of the reign of Charles the Firſt, it was enacted, that no perſon ſhould be kept

in cuſtody, in conſequence of ſuch impriſonments.

But the Judges knew how to evade the intention of this Act: they indeed did not refuſe to diſcharge a Man impriſoned without a cauſe; but they uſed ſo much delay in the examination of the cauſes, that they obtained the full effect of an open denial of Juſtice.

The Legiſlature again interpoſed, and in the Act paſſed in the ſixteenth year of the reign of Charles the Firſt, the ſame in which the Star-Chamber was ſuppreſſed, it was enacted, that "if any perſon be committed by the King "himſelf in perſon, or by his Privy Council, "or by any of the members thereof, he ſhall "have granted unto him, without any delay, "upon any pretence whatſoever, a writ of "*Habeas Corpus*; and that the Judge ſhall "thereupon, within three Court days after the "return is made, examine and determine the "legality of ſuch impriſonment."

This Act ſeemed to preclude every poſſibility of future evaſion: yet it was evaded ſtill; and, by the connivance of the Judges, the perſon who detained the priſoner could without danger, wait for a ſecond, and a third writ, called an *Alias* and a *Pluries*, before he produced him.

All theſe different artifices gave at length birth to the famous Act of *Habeas Corpus*, paſſed in the thirtieth year of the reign of Charles the Second, which in England is conſidered as a ſecond Great Charter, and has definitely ſuppreſſed all the reſources of oppreſſion *(a)*.

The principal articles of this act are, to fix the different terms allowed for bringing a priſoner: thoſe terms are proportioned to the diſtance; and none can in any caſe exceed twenty days.

2. That the Officer and Keeper neglecting to make due returns, or not delivering to the priſoner, or his agent, within ſix hours after demand, a copy of the warrant of commitment, or ſhifting the cuſtody of the priſoner from one to another, without ſufficient reaſon or authority, (ſpecified in the act) ſhall for the firſt offence forfeit one hundred pounds, and for the ſecond, two hundred, to the party grieved, and be diſabled to hold his office.

(a) The real title of the Act is, *An Act for better ſecuring the Subject, and for prevention of impriſonments beyond the Seas.*

3. No perſon, once delivered by *Habeas Corpus*, ſhall be recommitted for the ſame offence, on penalty of five hundred pounds.

4. Every perſon committed for treaſon or felony ſhall, if he require it in the firſt week of the next term, or the firſt day of the next ſeſſion, be indicted in that term or ſeſſion, or elſe admitted to bail, unleſs the King's witneſſes cannot be produced at that time: and if not indicted and tried in the ſecond term or ſeſſion, he ſhall be diſcharged of his impriſonment for ſuch imputed offence.

5. Any of the twelve Judges, or the Lord Chancellor, who ſhall deny a writ of *Habeas Corpus*, on ſight of the warrant, or on oath that the ſame is refuſed, ſhall forfeit ſeverally to the party grieved five hundred pounds.

6. No inhabitant of England (except perſons contracting, or convicts praying to be tranſported) ſhall be ſent priſoner to Scotland, Ireland, Jerſey, Guernſey, or any place beyond the Seas, within or without the King's dominions,—on pain, that the party committing, his adviſers, aiders, and aſſiſtants, ſhall forfeit to the party grieved a ſum not leſs

than five hundred pounds, to be recovered with treble coſts,—ſhall be diſabled to bear any office of truſt or profit,—ſhall incur the penalties of a *præmunire (a)*, and be incapable of the King's pardon.

(*a*) The Statutes of *præmunire*, thus called from the writ for their execution, which begins with the words *præmunire* (for *præmonere*) *facias* were originally deſigned to oppoſe the uſurpations of the Popes. The firſt was paſſed under the reign of Edward the Firſt, and has been followed by ſeveral others, which even before the Reformation, eſtabliſhed proviſions of ſuch a nature, as to draw upon one of them the epithet of *Execrabile Statutum*. The offences againſt which thoſe Statutes were framed, were alſo diſtinguiſhed by the appellation of *præmunire*; and under that word were included in general all attempts to promote the Pope's authority at the expence of the King's. The puniſhment decreed for ſuch caſes, was called a *præmunire*: it has ſince been extended again to ſeveral other Kinds of offence, and amounts to "the impriſonment for life, and forfeiture of all goods "and rents of lands during life." See Blackſtone's Com. book iv. ch. 8.

MVSEVM
BRITANNICVM

BOOK II.

CHAP. I.

Some Advantages peculiar to the Engliſh Conſtitution. 1. The Unity of the Executive Power.

WE have ſeen, in former Chapters, the reſources allotted to the different parts of the Engliſh Government for balancing each other, and how their reciprocal actions and reactions produce the freedom of the Conſtitution, which is no more than an equilibrium between the ruling powers of the State. I now propoſe to ſhew, that the particular nature and functions of theſe ſame conſtituent parts of the Government, which give it ſo different an appearance from that of other free States, are moreover attended with peculiar and very great advantages, which have not hitherto been ſufficiently obſerved.

The firſt peculiarity of the Engliſh Government, as a free Government, is its having a King, — its having thrown into one place the whole maſs, if I may uſe the expreſſion, of the Executive Power, and having invariably and for ever fixed it there. By this very circumſtance, alſo, has the *depoſitum* of it been rendered ſacred and inexpugnable — By making one great, very great, Man in the State, has an effectual check been put to the pretenſions of thoſe who otherwiſe would ſtrive to become ſuch, and diſorders have been prevented, which, in all Republics, ever brought on the ruin of liberty, and before it was loſt, obſtructed the enjoyment of it.

If we caſt our eyes on all the States that ever were free, we ſhall ſee that the People in them, ever turning their jealouſy, as it was natural, againſt the Executive Power, but never thinking of the means of limiting it that has ſo happily taken place in England *(a)*, have never employed any other expedient beſides that obvious one, of truſting that Power to Magiſtrates whom they appointed

(a) The rendering that power dependent on the people for its ſupplies. — See on this ſubject chapter VI. book I.

annually; which was in great measure to keep to themselves the management of it. Whence it resulted, that the People, who, whatever may be the frame of the Government, always possess, after all, the reality of power, uniting thus in themselves with this reality of power the actual exercise of it, in form as well as in fact, constituted the whole State. In order therefore legally to disturb the whole State, nothing more was requisite than to put in motion a certain number of individuals.

In a State which is small and poor, an arrangement of this kind is not attended with any great inconveniences, as every individual is taken up with the care of providing for his own subsistence, as great objects of ambition are wanting, and as evils cannot, in such a State, ever become much complicated. In a State that strives for aggrandisement, the difficulties and danger attending the pursuit of such a plan, inspire a general spirit of caution, and every individual makes a sober use of his rights as a Citizen.

But when, at last, those exterior motives come to cease, and the passions, and even the virtues, which they excited, thus become reduced to a state of inaction, the People

turn their eyes back towards the interior of the Republic, and every individual, in ſeeking then to concern himſelf in all affairs, ſeeks for new objects that may reſtore him to that ſtate of exertion, which habit, he finds, has rendered neceſſary to him, and to exerciſe a power which, ſmall as it is, yet flatters his vanity.

As the preceding events cannot but have given an influence to a certain number of Citizens, they avail themſelves of the general diſpoſition of the people, to promote their private views: the legiſlative power is thenceforth continually in motion; and as it is ill informed and falſely directed, almoſt every exertion of it is attended with ſome injury either to the Laws, or the State.

This is not all; as thoſe who compoſe the general Aſſemblies cannot, in conſequence of their numbers, entertain any hopes of gratifying their private ambition, or, in general, their private paſſions, they at leaſt ſeek to gratify their political caprices, and they accumulate the honours and dignities of the State on ſome favourite whom the public voice happens to raiſe at that time.

But, as in ſuch a State there can be, from the irregularity of the determinations of the

People, no ſuch thing as a ſettled courſe of meaſures, it happens that Men never can exactly tell the preſent ſtate of public affairs. The power thus given away is already grown very great, before thoſe by whom it was given ſo much as ſuſpect it; and he himſelf who enjoys that power, does not know its full extent: but then, on the firſt opportunity that offers, he ſuddenly pierces through the cloud which hid the ſummit from him, and at once ſeats himſelf upon it. The people, on the other hand, no ſooner recovered ſight of him, than they ſee their favourite become their Maſter, and diſcover the evil, only to find that it is paſt remedy.

As this power, thus ſurreptitiouſly acquired, is deſtitute of the ſupport both of the law, and of the ancient courſe of things, and is even but indifferently reſpected by thoſe who have ſubjected themſelves to it, it cannot be maintained but by abuſing it. The People at laſt ſucceed in forming ſomewhere a centre of union; they agree in the choice of a Leader; this Leader in his turn riſes; in his turn alſo he betrays his engagements; power produces its wonted effects, and the protector becomes a Tyrant.

This is not all; the ſame cauſes which have given a Maſter to the State, give it two, give it three. All thoſe rival powers endeavour to ſwallow up each other; the State becomes a ſcene of quarrels and endleſs broils, and is in a continual convulſion.

If amidſt ſuch diſorders the People retained their freedom, the evil muſt indeed be very great, to take away all the advantages of it; but they are ſlaves, and yet have not what in other Countries makes amends for political ſervitude, I mean tranquility.

In order to prove all theſe things, if proofs were deemed neceſſary, I would only refer the reader to what every one knows of Piſiſtratus and Megacles, of Marius and Sylla, of Cæſar and Pompey. However, I cannot avoid tranſlating a part of the ſpeech which a Citizen of Florence addreſſed once to the Senate: the reader will find in it a kind of abridged ſtory of all Republics; at leaſt of thoſe which, by the ſhare allowed to the People in the Government, deſerved that name, and which, beſides, have attained a certain degree of extent and power.

"And that nothing human may be perpetual and ſtable, it is the will of Heaven,

" that in all States whatſoever, there ſhould " ariſe certain deſtructive families, who are " the bane and ruin of them. Of this our " Republic can afford as many and more de- " plorable examples than any other, as it owes " its misfortunes not only to one, but to ſe- " veral of ſuch families. We had at firſt " the *Buondelmonti* and the *Huberti*. We had " afterwards the *Donati* and the *Cerchi*; and " at preſent, (ſhameful and ridiculous con- " duct!) we are waging war among ourſelves " for the *Ricci* and the *Albizzi*.

" When in former times the Ghibelins " were ſuppreſſed, every one expected that " the Guelfs, being then ſatisfied, would have " choſen to live in tranquility; yet, but a " little time had elapſed, when they again " divided themſelves into the factions of the " *Whites* and the *Blacks*. When the Whites " were ſuppreſſed, new parties aroſe, and new " troubles followed. Sometimes battles were " fought in favour of the Exiles; and at other " times, quarrels broke out between the No- " bility and the People. And, as if reſolved " to give away to others what we ourſelves " neither could, nor would peaceably enjoy, " we committed the care of our liberty,

" at ſometimes to King Robert, and at others
" to his brother, and at length to the Duke
" of Athens; never ſettling nor reſting in
" any kind of Government, as not knowing
" either how to enjoy liberty, or ſupport ſer-
" vitude (*a*)."

The Engliſh Conſtitution has prevented the poſſibility of misfortunes of this kind. Not only by diminiſhing the power, or rather the actual exerciſe of the power, of the People (*b*), and making them ſhare in the Legiſlature only by their Repreſentatives, the irreſiſtible violence has been avoided of thoſe numerous and general Aſſemblies, which, on whatever ſide they throw their weight, bear down every thing. Beſides, as the power of the People, when they have any power and know how to uſe it, is at all times really formidable, the Conſtitution has ſet a counterpoiſe to it; and the Royal authority is this counterpoiſe.

(*a*) See the Hiſtory of Florence, by Machiavel, lib. III.

(*b*) We ſhall ſee in the ſequel, that this diminution of the exerciſe of the power of the People has been attended with a great increaſe of their liberty.

In order to render it equal to ſuch a function, the Conſtitution has, in the firſt place, conferred on the King, as we have ſeen before, the excluſive prerogative of calling and diſmiſſing the legiſlative Bodies, and of putting a negative on their reſolutions.

Secondly, it has alſo placed on the ſide of the King the whole Executive Power in the Nation.

Laſtly, in order to effect ſtill nearer an equilibrium, the Conſtitution has inveſted the Man whom it has made the ſole Head of the State, with all the perſonal privileges, all the pomp, all the majeſty, of which human dignities are capable. In the language of the law, the King is Sovereign Lord, and the people are his ſubjects;—he is univerſal proprietor of the whole Kingdom;—he beſtows all the dignities and places;—and he is not to be addreſſed but with the expreſſions and outward ceremony of almoſt oriental humility. Beſides, his perſon is ſacred and inviolable; and any attempt whatſoever againſt it is, in the eye of the law, a crime equal to that of an attack againſt the whole State.

In a word, ſince to have too exactly completed the equilibrium between the power

of the People, and that of the Crown, would have been to ſacrifice the end to the means, that is, to have endangered liberty with a view to ſtrengthen the Government, the deficiency which ought to remain on the ſide of the latter, has at leaſt been in appearance made up, by conferring on the King all that ſort of ſtrength that may reſult from the opinion and reverence of the people; and amidſt the agitations which are the unavoidable attendants of liberty, the Royal power, like an anchor which reſiſts both by its weight and the depth of its hold, inſures a ſalutary ſteadineſs to the veſſel of the State.

The greatneſs of the prerogative of the King, by its thus procuring a great degree of ſtability to the State in general, has much leſſened the poſſibility of the evils we have deſcribed before; it has even totally prevented them, by rendering it impoſſible for any Citizen even to riſe to any dangerous greatneſs.

And to begin with an advantage by which the people eaſily ſuffer themſelves to be influenced, I mean that of birth, it is impoſſible for it to produce in England effects in any degree dangerous: for though there are

Lords who, beſides their wealth, may alſo boaſt of an illuſtrious deſcent, yet that advantage, being expoſed to a continual compariſon with the ſplendor of the Throne, dwindles almoſt to nothing; and in the gradation univerſally received of dignities and titles, that of Sovereign Prince and King places him who is inveſted with it, out of all degree of proportion.

The ceremonial of the Court of England is even formed upon that principle. Thoſe perſons who are related to the King, have the title of Princes of the blood, and, in that quality, an indiſputed pre-eminence over all other perſons *(a)*. Nay, the firſt Men in the Nation think it an honourable diſtinction to themſelves to hold the different menial offices in his Houſhold. If we therefore were to ſet aſide the extenſive and real power of the King, as well as the numerous means he poſſeſſes of ſatisfying the ambition and hopes of individuals, and were to conſider only the Majeſty of his title, and that ſtrength, founded on public opinion, which reſults from it, we

(a) This, by Stat. of the 31ſt of Hen. VIII. extends to the ſons, grandſons, brothers, uncles, and nephews, of the reigning King.

ſhould find that advantage ſo conſiderable, that to attempt to enter into a competition with it; with the bare advantage of high birth, which itſelf has no other foundation than public opinion, and that too in a very ſubordinate degree, would be an attempt completely extravagant.

If this difference is ſo great as to be thoroughly ſubmitted to, even by thoſe perſons whoſe ſituation might incline them to diſown it, much more does it influence the minds of the people. And if, notwithſtanding the value which every Engliſhman ought to put upon himſelf as a Man, and a free Man, there were any whoſe eyes are ſo very tender as to be dazzled by the appearance and the arms of a Lord, they would be totally blinded when they came to turn them towards the Royal Majeſty.

The only Man therefore, who, to thoſe who are unacquainted with the Conſtitution of England, might at firſt ſight appear in a condition to put the Government in danger, would be a Man who, by the greatneſs of his abilities and public ſervices, might have acquired in a high degree the love of the people, and obtained a great influence in the Houſe of Commons.

But how great ſoever this enthuſiaſm of the public may be, barren applauſe is the only

fruit which the Man whom they favour can expect from it. He can hope neither for a Dictatorſhip, nor a Conſulſhip, nor in general for any power under the ſhelter of which he may at once ſafely unmaſk that ambition with which we might ſuppoſe him to be actuated; or, if we ſuppoſe him to have been hitherto free from any, grow inſenſibly corrupt. The only door which the Conſtitution leaves open to his ambition, of whatever kind it may be, is a place in the adminiſtration during the pleaſure of the King. If, by the continuance of his ſervices, and the preſervation of his influence, he becomes able to aim ſtill higher, the only door which again opens to him, is that of the Houſe of Lords.

But this advance of the favourite of the people towards the eſtabliſhment of his greatneſs, is at the ſame time a great ſtep towards the loſs of that power which might render him formidable.

In the firſt place, the People ſeeing that he is become much leſs dependent on their favour, begin, from that very moment, to leſſen their attachment to him. Seeing him moreover diſtinguiſhed by privileges which are the object of their jealouſy, I mean their political jealouſy, and member of a body

whoſe intereſts are frequently oppoſite to their's, they immediately conclude that this great and new dignity cannot have been acquired but through a ſecret agreement to betray them. Their favourite, thus ſuddenly transformed, is going, they make no doubt, to adopt a conduct entirely contrary to that which hitherto has been the cauſe of his advancement and high reputation, and in the compaſs of a few hours completely renounce thoſe principles which he has ſo long and ſo loudly profeſſed. In this certainly the People are miſtaken; but yet neither would they be wrong, if they feared that a zeal hitherto ſo warm, ſo conſtant, I will even add, ſo ſincere, when it concurred with their Favourite's private intereſt, would, by being thenceforth often in oppoſition to it, be gradually much abated.

Nor is this all; the favourite of the people does not even find in his new acquired dignity, all the increaſe of greatneſs and eclat that might at firſt be imagined.

Hitherto he was, it is true, only a private individual; but then he was the object in which the whole Nation intereſted themſelves; his actions and words were ſet forth in all the public prints; and he every where met with applauſe and acclamation.

All theſe tokens of public favour are, I know, ſometimes acquired very lightly; but they never laſt long, whatever people may ſay, unleſs real ſervices are performed; now, the title of Benefactor to the Nation, when deſerved and univerſally beſtowed, is certainly a very handſome title, and which does no-wiſe require the aſſiſtance of outward pomp to ſet it off. Beſides, though he was only a Member of the inferior body of the Legiſlature, we muſt obſerve, he was the firſt; and the word *firſt* is alway a word of very great moment.

But now that he is made Lord, all his greatneſs, which hitherto was indeterminate, becomes defined. By granting him privileges eſtabliſhed and fixed by known laws, that uncertainty is taken from his luſtre which is of ſo much value in thoſe things which depend on imagination; and his value is lowered, juſt becauſe it is aſcertained.

Beſides, he is a Lord; but then there are ſeveral Men who poſſeſs but ſmall abilities and few eſtimable qualifications, who alſo are Lords; his lot is, nevertheleſs, to be ſeated among them; the law places him exactly on the ſame level with them; and all that is real in his greatneſs, is thus loſt in a crowd of dignities, hereditary and conventional.

And theſe are not the only loſſes which the favourite of the People is to ſuffer. Independently of thoſe great changes which he deſcries at a diſtance, he feels around him alterations no leſs viſible, and ſtill more painful.

Seated formerly in the Aſſembly of the Repreſentatives of the People, his talents and continual ſucceſs had ſoon raiſed him above the level of his fellow Members: and, being carried on by the vivacity and warmth of the public favour, thoſe who might have been tempted to ſet up as his competitors, were reduced to ſilence, or even became his ſupporters.

Admitted now into an Aſſembly of perſons inveſted with a perpetual and hereditary title, he finds Men hitherto his ſuperiors,—Men who ſee with a jealous eye the eminent talents of the *homo novus*, and who are firmly reſolved that after having been the leading Man in the Houſe of Commons, he ſhall not be the firſt in their's.

In a word, the ſucceſs of the favourite of the People was brilliant, and even formidable: but the Conſtitution, in the very reward it prepares for him, makes him find a kind of Oſtraciſm. His advances were ſudden, and his courſe rapid; he was, if you pleaſe, like a torrent ready to bear down every thing before

it; but this torrent is compelled, by the general arrangement of things, finally to throw itſelf into a vaſt reſervoir, where it mingles, and loſes its force and direction.

I know it may be ſaid, that, in order to avoid the fatal ſtep which is to deprive him of ſo many advantages, the favourite of the People ought to refuſe the new dignity which is offered to him, and wait for more important ſucceſſes from his eloquence in the Houſe of Commons, and his influence over the People.

But thoſe who give him this counſel, have not ſufficiently examined it. Without doubt there are Men in England, who in their preſent purſuit of a project which they think eſſential to the public good, would be capable of refuſing for a while a place which would deprive their virtue of opportunities of exerting itſelf, or might more or leſs endanger it. But woe to him who ſhould perſiſt in ſuch a refuſal, with any pernicious deſign! and who, in a Government where liberty is eſtabliſhed on ſo ſolid and extenſive a baſis, ſhould endeavour to make the People believe that their fate depends on the perſevering virtue of a ſingle Citizen. His ambitious views being at laſt diſcovered (nor could it be long before they would be ſo), his obſtinate reſo-

lution to move out of the ordinary courſe of things, would indicate aims, on his part, of ſuch an extraordinary nature, that all Men whatever, who have any regard for their Country, would inſtantly riſe up from all parts to oppoſe him, and he muſt fall, overwhelmed with ſo much ridicule, that it would be better for him to fall from the Tarpeian rock (*a*).

In fine, even though we were to ſuppoſe that the new Lord might, after his exaltation, have preſerved all his intereſt with the People, or, what would be no leſs difficult, that any Lord whatever could, by dint of his wealth and high birth, rival the ſplendor of the Crown itſelf, all theſe advantages, how great ſoever we may ſuppoſe them, as they

(*a*) The Reader will perhaps object, that no Man in England can poſſibly entertain ſuch views as thoſe I have ſuppoſed here: this is preciſely what I intended to prove. The eſſential advantage of the Engliſh Government above all thoſe that have been called *free*, and which in many reſpects were but apparently ſo, is, that no perſon in England can entertain ſo much as a thought of his ever riſing to the level of the Power charged with the execution of the Laws. All Men in the State, whatever may be their rank, wealth, or influence, are thoroughly convinced, that they ſhall in reality as well as in name) continue to be *Subjects*; and are thus compelled really to love, to defend, and to promote thoſe laws which ſecure the liberty of the Subject. This latter obſervation will be again introduced afterwards.

would not of themſelves be able to confer on him the leaſt executive authority, muſt for ever remain mere ſhowy unſubſtantial advantages. Finding all the active powers in the State concentered in that very ſeat of power which we ſuppoſe him inclined to attack, and there ſecured by the moſt formidable proviſions, his influence muſt always evaporate in ineffectual words; and after having advanced himſelf, as we ſuppoſe, to the very foot of the Throne, finding no branch of independent power which he might appropriate to himſelf, and thus at laſt give a reality to his political importance, he would ſoon ſee it, however great it might have at firſt appeared, decline and die away.

God forbid, however, that I ſhould mean that the People of England are ſo fatally tied down to inaction, by the nature of their Government, that they cannot, in times of oppreſſion, find means of appointing a Leader. No; I only meant to ſay that the laws of England open no door to thoſe accumulations of power, which have been the ruin of ſo many Republics; that they offer to the ambitious no poſſible means of taking advantage of the inadvertence, or even the gratitude, of the People, to make themſelves their Tyrants; and that the public power, of which the King has been made

the excluſive depoſitary, muſt remain unſhaken in his hands, ſo long as things continue to keep in their legal order; which, it may be obſerved, is a ſtrong inducement to him conſtantly to endeavour to maintain them in it (*a*).

(*a*) There are ſeveral events, in the Engliſh Hiſtory, which put in a very ſtrong light this idea of the ſtability which the power of the Crown gives to the State.

The firſt is the facility with which the great Duke of Marlborough, and his party at home, were removed from their ſeveral employments. Hannibal, in circumſtances nearly ſimilar, had continued the war againſt the will of the Senate of Carthage: Cæſar had done the ſame in Gaul; and when at laſt he was expreſsly required to deliver up his commiſſion, he marched his army to Rome, and eſtabliſhed a military deſpotiſm. But the Duke though ſurrounded, as well as the above named Generals, by a victorious army, and by Allies in conjunction with whom he had carrried on ſuch a ſucceſsful war, did not even heſitate to ſurrender his commiſſion. He knew that all his ſoldiers were inſeparably prepoſſeſſed in favour of that Power againſt which he muſt have revolted: he knew that the ſame prepoſſeſſions were deeply rooted in the minds of the whole Nation, and that every thing among them concurred to ſupport the ſame Power: he knew that the very nature of the claims he muſt have ſet up, would inſtantly have made all his Officers and Captains turn themſelves againſt him, and, in ſhort, that in an enterprize of that nature, the arm of the ſea he had to repaſs, was the ſmalleſt of the obſtacles he would have to encounter.

The other event I ſhall mention here, is that of the Revolution of 1689. If the long eſtabliſhed power of the Crown had not beforehand prevented the people from

CHAP. II.

The Subject concluded.—The Executive Power is more eaſily confined when it is ONE.

ANOTHER great advantage, and which one would not at firſt expect, in this *unity* of the public power in England,—in this union, and, if I may ſo expreſs myſelf, in this coacervation, of all the branches of the Executive authority, is the greater facility it affords of reſtraining it.

In thoſe States where the execution of the laws is intruſted to ſeveral different hands, and to each with different titles and prerogatives, ſuch diviſion, and the changeableneſs of meaſures which muſt be the conſequence of it, conſtantly hide the true cauſe of the evils of the State: in the endleſs fluctuation of things, no political principles have time to ſettle among the People; and public mis-

accuſtoming themſelves to fix their eyes on ſome particular Citizens, and in general had not prevented all Men in the State from attaining any too conſiderable degree of power and greatneſs, the expulſion of James might have been followed by events ſimilar to thoſe which took place at Rome after the death of Cæſar.

fortunes happen, without ever leaving behind them any uſeful leſſon.

At ſome times military Tribunes, and at others, Conſuls, bear an abſolute ſway;—ſome times Patricians uſurp every thing, and at other times, thoſe who are called Nobles *(a)*;—ſometimes the People are oppreſſed by Decemvirs, and at others by Dictators.

Tyranny, in ſuch States, does not always beat down the fences that are ſet around it; but it leaps over them. When men think it confined to one place, it ſtarts up again in another;—it mocks the efforts of the People not becauſe it is invincible, but becauſe it is unknown;—ſeized by the arm of a Hercules, it eſcapes with the changes of a Proteus.

But the indiviſibility of the Public power in England has conſtantly kept the views and efforts of the People directed to one and the ſame object; and the permanence of that Power

(a) The capacity of being admitted to all places of public truſt, at laſt gained by the Plebeians, having rendered uſeleſs the old diſtinction between them and the Patricians, a coalition was then effected between the great Plebeians, or Commoners, who got into theſe places, and the ancient Patricians; hence a new Claſs of Men aroſe, who were called *Nobiles* and *Nobilitas*. Theſe are the words by which Livy, after that period, conſtantly diſtinguiſhes thoſe Men and families who were at the head of the State.

has alſo given a permanence and a regularity to the precautions they have taken to reſtrain it.

Conſtantly turned towards that ancient fortreſs, the Royal power, they have made it, for ſeven centuries, the object of their fear; with a watchful jealouſy they have conſidered all its parts—they have obſerved all its outlets—they have even pierced the earth to explore its ſecret avenues, and ſubterraneous works.

United in their views by the greatneſs of the danger, they regularly formed their attacks. They eſtabliſhed their works, firſt at a diſtance; then brought them ſucceſſively nearer; and, in ſhort, raiſed none but what ſerved afterwards as a foundation or ſupport to others.

After the great Charter was eſtabliſhed, forty ſucceſſive confirmations ſtrengthen it. The Act called *the Petition of Right*, and that paſſed in the ſixteenth year of Charles the Firſt, then followed: ſome years after, the *Habeas Corpus* Act was eſtabliſhed; and the Bill of Rights made at length its appearance. In fine, whatever the circumſtances may have been, they always had, in their efforts, that ineſtimable advantage of knowing with certainty the general ſeat of the evils they had to defend themſelves againſt; and each calamity, each

particular eruption, by pointing out ſome weak place, has ever gained a new bulwark to Liberty.

To ſay all in three words; the Executive power in England is formidable, but then it is for ever the ſame: its reſources are vaſt, but their nature is at length known: it has been made the indiviſible and inalienable attribute of one perſon alone, but then all other perſons, of whatever rank or degree, become really intereſted to reſtrain it within its proper bounds *(a)*.

CHAP. III.

A ſecond Peculiarity.—The Diviſion of the Legiſlative Power.

THE ſecond peculiarity which England, as an undivided State and a free State, exhibits in its Conſtitution, is the diviſion of its Legiſlature. But, in order to make the

(a) This laſt advantage of the greatneſs and indiviſibility of the Executive power, viz. the obligation it lays upon the greateſt Men in the State, ſincerely to unite in a common cauſe with the people, will be more amply diſcuſſed hereafter, when a more particular compariſon between the Engliſh Government and the Republican form, ſhall be offered to the Reader.

reader more ſenſible of the advantages of this diviſion, it is neceſſary to deſire him to attend to the following conſiderations.

It is, without doubt, abſolutely neceſſary, for ſecuring the Conſtitution of a State, to reſtrain the Executive power; but it is ſtill more neceſſary to reſtrain the Legiſlative. What the former can only do by ſucceſſive ſteps (I mean ſubvert the laws), and through a longer or ſhorter train of enterprizes, the latter does in a moment. As its bare will can give being to the laws; ſo its bare will can alſo annihilate them: and, if I may be permitted the expreſſion,—the Legiſlative power can change the Conſtitution, as God created the light.

In order therefore to inſure ſtability to the Conſtitution of a State, it is indiſpenſably neceſſary to reſtrain the Legiſlative authority. But here we muſt obſerve a difference between the Legiſlative and Executive powers. The latter may be confined, and even is the more eaſily ſo, when undivided: the Legiſlative, on the contrary, in order to its being reſtrained, ſhould abſolutely be divided. For, whatever laws it may make to reſtrain itſelf, they never can can be, relatively to it, any thing more than ſimple reſolutions: as thoſe bars which it might erect to ſtop its own motions,

muſt then be within it, and reſt upon it, they can be no bars. In a word, the ſame kind of impoſſibility is found, to fix the Legiſlative power, when it is *one*, which Archimedes objected againſt his moving the Earth.

Nor does ſuch a diviſion of the Legiſlature only render it poſſible for it to be reſtrained, ſince each of thoſe parts into which it is divided, can then ſerve as a bar to the motions of the others; but it even makes it to be actually ſo reſtrained. If it has been divided into only two parts, it is probable that they will not in all caſes unite, either for *doing*, or *undoing*:—If it has been divided into three parts, the chance that no changes will be made, is thereby greatly increaſed.

Nay more; as a kind of point of honour will naturally take place between theſe different parts of the Legiſlature, they will therefore be led to offer to each other only ſuch propoſitions as will at leaſt be plauſible; and all very prejudicial changes will thus be prevented, as it were, before their birth.

If the Legiſlative and Executive powers differ ſo greatly with regard to the neceſſity of their being divided, in order to their being reſtrained, they differ no leſs with regard to the other conſequences ariſing from ſuch diviſion,

The diviſion of the Executive power neceſſarily introduces actual oppoſitions, even violent ones, between the different parts into which it has been divided; and that part which in the iſſue ſucceeds ſo far as to abſorb, and unite it itſelf, all the others, immediately ſets itſelf above the laws. But thoſe oppoſitions which take place, and which the public good requires ſhould take place, between the different parts of the Legiſlature, never are any thing more than oppoſitions between contrary opinions and intentions; all is tranſacted in the regions of the underſtanding; and the only contention that ariſes is wholly carried on with thoſe inoffenſive weapons, aſſents and diſſents, *ayes* and *noes*.

Beſides, when one of theſe parts of the Legiſlature is ſo ſucceſsful as to engage the others to adopt its propoſition, the reſult is, that a law takes place which has in it a great probability of being good; when it happens to be defeated, and ſees its propoſition rejected, the worſt that can reſult from it is, that a law is not made at that time; and the loſs which the State ſuffers thereby, reaches no farther than the temporary ſetting aſide of ſome more or leſs uſeful ſpeculation.

In a word, the reſult of a diviſion of the Executive power, is either a more or leſs ſpeedy eſtabliſhment of *the right of the ſtrongeſt*, or a continued ſtate of war *(a)*:—that of a diviſion of the Legiſlative power, is either truth, or general tranquility.

The following maxim will therefore be admitted. That the laws of a State may be permanent, it is requiſite that the Legiſlative power ſhould be divided:—that they may have weight, and continue in force, it is neceſſary that the Executive power ſhould be *one*.

If the reader conceived any doubt as to the truth of the above obſervations, he need only caſt his eyes on the hiſtory of the proceedings of the Engliſh Legiſlature down to our times, to find a proof of them. He would be ſurpriſed to ſee how little variation there has been in the political laws of this Country, eſpecially during the laſt hundred years, though, it is moſt important to obſerve, the Legiſlature has been, as it were, in a continual

(a). Every one knows the frequent hoſtilities that took place between the Roman Senate and the Tribunes. In Sweden there have been continual contentions between the King and the Senate, in which they have overpowered each other by turns. And in England, when the Executive power became double, by the King allowing the Parliament to have a perpetual and independent exiſtence, a civil war almoſt immediately followed,

ſtate of action, and, no diſpaſſionate Man will deny, has generally promoted the public good. Nay, if we except the Act paſſed under William III. by which it had been enacted, that Parliaments ſhould ſit no longer than three years, and which was repealed by a ſubſequent Act, under George I. which allowed them to ſit for ſeven years, we ſhall not find that any law, which can really be called Conſtitutional, and which has been enacted ſince the Reſtoration, has been changed afterwards.

Now, if we compare this ſteadineſs of the Engliſh Government with the continual ſubverſions of the Conſtitutional laws of ſome ancient Republics, with the imprudence of ſome of the laws paſſed in their aſſemblies *(a)*, and with the ſtill greater inconſiderateneſs with which they ſometimes repealed the moſt ſalutary regulations, as it were the day after they had been enacted,—if we call to mind the extraordinary means to which the Legiſlature of thoſe Republics, at times ſenſible how its very power was prejudical to itſelf and to the State, was obliged to have recourſe, in

(*a*) The Athenians, among other laws, had enacted one to forbid applying a certain part of the public revenues to any other uſe than the expences of the Theatres and public Shows.

order, if poſſible, to tie its own hands *(a)*, we ſhall remain convinced of the great advantages which attend the conſtitution of the Engliſh Legiſlature *(b)*.

Nor is this diviſion of the Engliſh Legiſlature accompanied (which is indeed a very fortunate circumſtance) by any actual diviſion of the Nation: each conſtituent part of it poſſeſſes ſtrength ſufficient to inſure reſpect to its reſolutions, yet no real diviſion has been made of the forces of the State. Only, a greater proportional ſhare of all thoſe diſtinctions which are calculated to gain the reverence of the People, has been allotted to thoſe parts of the Legiſlature, which could not poſſeſs their

(a) In ſome ancient Republics, when the Legiſlature wiſhed to render a certain law permanent, and at the ſame time miſtruſted their own future wiſdom, they added a clauſe to it, which made it death to propoſe the revocation of it. Thoſe who afterwards thought ſuch revocation neceſſary to the public welfare, relying on the mercy of the People, appeared in the public Aſſembly with a halter about their necks.

(b) We ſhall perhaps have occaſion to obſerve, hereafter, that the true cauſe of the equalibity of the operations of the Engliſh Legiſlature, is the oppoſition that happily takes places between the different views and intereſts of the ſeveral bodies that compoſe it; a conſideration this, without which all political inquiries are no more than airy ſpeculations, and which is the only one that can lad to uſeful practical concluſion s.

confidence, in ſo high a degree as the others; and inequalities in point of real ſtrength between them, have been made up by the magic of dignity.

Thus the King, who alone forms one part of the Legiſlature, has on his ſide the majeſty of the kingly title: the two Houſes are, in appearance, no more than Councils entirely dependent on him; they are bound to follow his perſon; they only meet, as it ſeems, to adviſe him; and never addreſs him but in the moſt ſolemn and reſpectful manner.

As the Nobles, who form the ſecond order of the Legiſlature, bear, in point of both real weight and numbers, no proportion to the body of the People *(a)*, they have received

(a) It is for want of having duly conſidered this ſubject, that Mr. Rouſſeau exclaims, ſomewhere, againſt thoſe who, when they ſpeak of General Eſtates of France, "dare call the people, the *third* Eſtate." At Rome, where all the order we mention was inverted,—where the *faſces* were laid down at the feet of the People,—and where the Tribunes, whoſe function, like that of the King of England, was to oppoſe the eſtabliſhment of the new laws, were only ſubordinate kind of Magiſtracy, many diſorders followed. In Sweden, and in Scotland, (before the union) faults of another kind prevailed: in the former kingdom, for inſtance, an overgrown body of two thouſand Nobles frequently overruled both King and People.

as a compenſation, the advantage of perſonal honours, and of an hereditary title.

Beſides, the eſtabliſhed ceremonial gives to their Aſſembly a great pre-eminence over that of the Repreſentatives of the People. They are the *upper* Houſe, and the others are the *lower* Houſe. They are in a more ſpecial manner conſidered as the King's Council, and it is in the place where they aſſemble that his Throne is placed.

When the King comes to the Parliament, the Commons are ſent for, and make their appearance at the bar of the Houſe of Lords. It is moreover before the Lords, as before their Judges, that the Commons bring their impeachments. When, after paſſing a bill in their own Houſe, they ſend it to the Lords, to deſire their concurrence, they always order a number of their own Members to accompany it *(a)*; whereas the Lords ſend down their bills to them, only by ſome of the Aſſiſtants of their Houſe *(b)*. When the nature of the

(*a*) The Speaker of the Houſe of Lords muſt come down from his woolpack to receive the bills which the Members of the Commons bring to their Houſe.

(*b*) The twelve Judges and the Maſters of Chancery. There is alſo a ceremonial eſtabliſhed with regard to the manner, and marks of reſpect, with which thoſe two of them, who are ſent with a bill to the Commons, are to deliver it.

alterations which one of the two Houſes deſires to make in a bill ſent to it by the other, renders a conference between them neceſſary, the Deputies of the Commons to the Committeee which is then formed of Members of both Houſes, are to remain uncovered. Laſtly, thoſe bills which (in which ever of the two Houſes, they have originated) have been agreed to by both, muſt be depoſited in the Houſe of Lords, there to remain till the Royal pleaſure is ſignified.

Beſides, the Lords are Members of the Legiſlature by virtue of a right inherent in their perſons, and they are ſuppoſed to ſit in Parliament on their own account, and for the ſupport of their own intereſts. In conſequence of this they have the privilege of giving their votes by *proxies (a)*; and, when any of them diſſent from the reſolutions of their Houſe, they may enter a proteſt againſt them, containing the reaſons of their diſſent. In a word, as this part of the Legiſlature is deſtined frequently to balance the power of the People, what it could not receive in real ſtrength, it has received in outward ſplendor and great-

(a) The Commons have not that privilege, becauſe they are themſelves *proxies* for the People.—See Coke's Inſt. iv. p. 41.

neſs; ſo that, when it cannot reſiſt by its weight, it overawes by its apparent magnitude.

In fine, as theſe various prerogatives by which the component parts of the Legiſlature are thus made to balance each other, are all intimately connected with the fortune of State, and flouriſh and decay according to the viciſſitudes of public proſperity and adverſity, it will follow that, though particular oppoſitions may at particular times take place among thoſe parts, there ſcarcely can ariſe any, when the general welfare is really in queſtion. And when, to reſolve the doubts that may ariſe in political ſpeculations of this kind, we caſt our eyes on the debates of the two Houſes for a long ſucceſſion of years, and ſee the nature of the laws which have been propoſed, of thoſe which have paſſed, and of thoſe which have been rejected, as well as of the arguments that have been urged on both ſides, we ſhall remain convinced of the goodneſs of the principles on which the Engliſh Legiſlature is formed.

CHAP. IV.

A third Advantage peculiar to the Engliſh Government. The Buſineſs of propoſing Laws, lodged in the Hands of the People.

A THIRD circumſtance which I propoſe to ſhow to be peculiar to the Engliſh Government, is the manner in which the offices of the three component parts of the Legiſlature have been divided among them, and regulated.

If the Reader will be pleaſed to obſerve, he will find that in moſt of the ancient free States, the ſhare of the People in the buſineſs of Legiſlation, was to approve, or reject, the propoſitions which were made to them, and to give the final ſanction to the laws. The function of thoſe Perſons, or in general thoſe Bodies, who were intruſted with the Executive power, was to prepare and frame the Laws, and then to propoſe them to the People: and, in a word, they poſſeſſed that branch of the Legiſlative power which may be called the *initiative*, that is, the prerogative of putting that power in action *(a)*.

(*a*) This power of previouſly conſidering and approving ſuch laws as were afterwards to be propounded.

This *initiative*, or excluſive right of propoſing, in Legiſlative aſſemblies, attributed to the Magiſtrates, is indeed very uſeful, and perhaps even neceſſary, in States of a republican form, for giving a permanence to the laws, as well as for preventing the diſorders and ſtruggles for power which have been mentioned before; but upon examination we ſhall find that this expedient is attended with inconveniences of little leſs magnitude than the evils it is meant to remedy.

the People, was, in the firſt times of the Roman Republic, conſtantly exerciſed by the Senate: laws were made, *Populi juſſu, ex auctoritate Senatûs.* Even in caſes of elections, the previous approbation and *auctoritas* of the Senate, with regard to thoſe perſons who were offered to the ſuffrages of the People, was required. *Tum enim non gerebat is magiſtratum qui ceperat, ſi Patres auctores non erant facti.* Cic. pro Plancio, 3.

At Venice the Senate alſo exerciſes powers of the ſame kind, with regard to the *Grand Council* or Aſſembly of the Nobles. In the Canton of Bern, all propoſitions muſt be diſcuſſed in the *little* Council, which is compoſed of twenty ſeven Members, before they are laid before the Council of the *two hundred*, in whom reſides the ſovereignty of the whole Canton. And in Geneva, the law is, "that nothing ſhall be treated in the *General Council*, "or Aſſembly of the Citizens, which has not been pre- "viouſly treated and approved in the Council of the "*two hundred*; and that nothing ſhall be treated in the "*two hundred*, which has not been previouſly treated "and approved in the Council of the *twenty-five*.

Theſe Magiſtrates, or Bodies, at firſt indeed apply frequently to the Legiſlature for a grant of ſuch branches of power as they dare not of themſelves aſſume, or for the removal of ſuch obſtacles to their growing authority as they do not yet think it ſafe for them peremptorily to ſet aſide. But when their authority has at laſt gained a ſufficient degree of extent and ſtability, as farther manifeſtations of the will of the Legiſlature could then only create obſtructions to the exerciſe of their power, they begin to conſider the Legiſlature as an enemy whom they muſt take great care never to rouſe. They conſequently convene the Aſſembly of the People as ſeldom as they can. When they do it, they carefully avoid propoſing any thing favourable to public liberty. Soon they even entirely ceaſe to convene the Aſſembly at all; and the People, after thus loſing the power of legally aſſerting their rights, are expoſed to that which is the higheſt degree of political ruin, the loſs of even the remembrance of them; unleſs ſome indirect means are found, by which they may from time to time give life to their dormant privileges; means which may be found, and ſucceed pretty well in ſmall States, where proviſions can more eaſily be made to anſwer their in-

tended ends, but in States of conſiderable extent, have always been found, in the event, to give riſe to diſorders of the ſame kind with thoſe which were at firſt intended to be prevented.

But as the capital principle of the Engliſh Conſtitution totally differs from that which forms the baſis of Republican Governments, ſo is it capable of procuring to the People advantages that are found to be unattainable in the latter. It is the People in England, or at leaſt thoſe who repreſent them, who poſſeſs the *initiative* in Legiſlation, that is to ſay, who perform the office of framing laws, and propoſing them. And among the many circumſtances in the Engliſh Government, which would appear entirely new to the Politicians of antiquity, that of ſeeing the perſon intruſted with the Executive power bear that ſhare in Legiſlation which they looked upon as being neceſſarily the lot of the People, and the People that which they thought the indiſpenſable office of its Magiſtrates, would not certainly be the leaſt occaſion of their ſurprize.

I foreſee that it will be objected, that, as the King of England has the power of diſſolving, and even of not calling Parliaments, he is hereby poſſeſſed of a prerogative which

in fact is the ſame with that which I have juſt now repreſented as being ſo dangerous.

To this I anſwer, that all circumſtances ought to combine together. Doubtleſs, if the Crown had been under no kind of dependence whatever on the people, it would long ſince have exempted itſelf from the obligation of calling their Repreſentatives together; and the Britiſh Parliament, like the National Aſſemblies of ſeveral other Kingdoms, would have no exiſtence but in Hiſtory.

But, as we have above ſeen, the neceſſities of the State, and the wants of the Sovereign himſelf, put him under a neceſſity of having frequently recourſe to his Parliament; and then the difference may be ſeen between the prerogative of not calling an Aſſembly, when powerful cauſes nevertheleſs render ſuch a meaſure neceſſary, and the excluſive right, when an Aſſembly is convened, of *propoſing* laws to it.

In the latter caſe, though a Prince, let us even ſuppoſe, in order to ſave appearances, might condeſcend to mention any thing beſides his own wants, it would be at moſt to propoſe the giving up of ſome branch of his prerogative upon which he ſet no value, or to reform ſuch abuſes as his inclination does not lead him to imitate; but he would be very

careful not to touch any points which might materially affect his authority.

Beſides, as all his conceſſions would be made, or appear to be made, of his own motion, and would in ſome meaſure ſeem to ſpring from the activity of his zeal for the public welfare, all that he might offer, though in fact ever ſo inconſiderable, would be repreſented by him as grants of the moſt important nature, and for which he expects the higheſt gratitude. Laſtly, it would alſo be his province to make reſtrictions and exceptions to laws thus propoſed by himſelf; he would alſo be the perſon who was to chuſe the words to expreſs them, and it would not be reaſonable to expect that he would give himſelf any great trouble to avoid all ambiguity (*a*).

(*a*) In the beginning of the exiſtence of the Houſe of Commons, bills were preſented to the King under the form of *Petitions*. Thoſe to which the King aſſented, were regiſtered among the rolls of Parliament, with his anſwer to them; and at the end of each Parliament, the Judges formed them into Statutes. Several abuſes having crept into that method of proceeding, it was ordained that the Judges ſhould in future make the Statute before the end of every Seſſion. Laſtly, as even that became, in proceſs of time, inſufficient, the preſent method of framing bills was eſtabliſhed; that is to ſay, both Houſes now frame the Statutes in the very form and words in which they are to ſtand when they have received the Royal aſſent,

But the Parliament of England is not, as we ſaid before, bound down to wait paſſively and in ſilence for ſuch laws as the Executive power may condeſcend to propoſe to them. At the opening of every Seſſion, they of themſelves take into their hands the great book of the State; they open all the pages, and examine every article.

When they have diſcovered abuſes, they proceed to enquire into their cauſes:—when theſe abuſes ariſe from an open diſregard of the laws, they endeavour ro ſtrengthen them; when they proceed from their inſufficiency, they remedy the evil by additional proviſions *(a)*.

(*a*) No popular Aſſembly ever enjoyed the privilege of ſtarting, canvaſſing, and propoſing new matter to ſuch a degree as the Engliſh Commons. In France, when their General Eſtates were allowed to ſit, their *remonſtrances* were little regarded, and the particular Eſtates of the Provinces dare now hardly preſent any. In Sweden, the Power of propoſing new ſubjects was lately lodged in an Aſſembly, called the *Secret Committee*, compoſed of Nobles, and a few of the Clergy; and is now poſſeſſed by the King. In Scotland, until the *Union*, all propoſitions laid before the Parliament, were made by the perſons called the *Lords of the Articles*. With regard to Ireland, all bills muſt be prepared by the King in his Privy Council, and to be laid before their Parliament by the Lord Lieutenant, for their aſſent or diſſent: only they are allowed to diſcuſs, among them, what they call *Heads of a bill*, which the Lord

Nor do they proceed with leſs regularity and freedom, in regard to that important object, ſubſidies. They are to be the ſole Judges of the quantity of them, as well as of the ways and means of raiſing them; and they need not come to any reſolution with regard to them, till they ſee the ſafety of the Subject completely provided for. In a word, the making of laws is not, in ſuch an arrangement of things, a *gratuitous* contract, in which the People are to take juſt what is given them, and as it is given them :—it is a contract in which they *buy* and *pay*, and in which they themſelves ſettle the different conditions, and furniſh the words to expreſs them.

The Engliſh Parliament have given a ſtill greater extent to their advantages on ſo important a ſubject. They have not only ſecured to themſelves a right of propoſing laws and remedies, but they have alſo prevailed

Lieutenant is deſired afterwards to tranſmit to the King, who ſelects out of them what clauſes he thinks proper, or ſets the whole aſide; and is not expected to give at any time, any preciſe anſwer to them. And in republican Governments, Magiſtrates never are at reſt till they have entirely ſecured to themſelves the important privilege of *propoſing*; nor does this follow merely from their ambition; it is alſo a conſequence of the ſituation they are in, from the principles of that mode of Government.

on the Executive power to renounce all claim to do the ſame. It is even a conſtant rule, that neither the King, nor his Privy Council, can make any amendments to the bills preferred by the two Houſes; but the King is merely to accept or reject them: a proviſion this, which, if we pay a little attention to the ſubject, we ſhall find to have been alſo neceſſary for completely ſecuring the freedom and regularity of their deliberations *(a)*.

I indeed confeſs that it ſeems very natural, in the modelling of a State, to intruſt this very important office of framing laws, to thoſe perſons who may be ſuppoſed to have

(*a*) The King indeed at times ſends meſſages to either Houſe; and nobody, I think, can wiſh that no means of intercourſe ſhould exiſt between him and his Parliament. But theſe meſſages are always expreſſed in very general words; they are only made to deſire the Houſe to take certain ſubjects into their conſideration; no particular articles or clauſes are expreſſed; the Commons are not to declare, at any ſettled time, any ſolemn acceptation or rejection of the propoſition made by the King; and, in ſhort, the Houſe follows the ſame mode of proceeding, with reſpect to ſuch meſſages, as they uſually do in regard to petitions preſented by private individuals. Some Member makes a motion upon the ſubject expreſſed in the King's meſſage; a bill is framed in the uſual way; it may be dropt at every ſtage of it; and it is never the propoſal of the Crown, but the motions of ſome of their own Members, which the Houſe diſcuſs, and finally accept or reject.

before acquired experience and wiſdom in the management of public affairs. But events have unfortunately demonſtrated, that public employments and power improve the underſtanding of Men in a leſs degree than they pervert their views; and it has been found in the iſſue, that the effect of a regulation which, at firſt ſight, ſeems ſo perfectly conſonant with prudence, is to confine the People to a mere paſſive and defenſive ſhare in Legiſlation, and to deliver them up to the continual enterpriſes of thoſe who, at the ſame time that they are under the greateſt temptations to deceive them, poſſeſs the moſt powerful means of effecting it.

If we caſt our eyes on the Hiſtory of the ancients Governments, in thoſe times when the perſons entruſted with the Executive power were ſtill in a ſtate of dependence on the Legiſlature, and conſequently frequently obliged to have recourſe to it, we ſhall ſee almoſt continual inſtances of ſelfiſh and inſidious laws propoſed by them to the Aſſemblies of the people.

And thoſe Men in whoſe wiſdom the law had at firſt placed ſo much confidence, became, in the iſſue, ſo loſt to all ſenſe of ſhame and duty, that when arguments were found to be no longer ſufficient, they had

recourſe to force; the legiſlative Aſſemblies became ſo many fields of battle, and their power, a real calamity.

I know very well, however, that there are other important circumſtances beſides thoſe I have juſt mentioned, which would prevent diſorders of this kind from taking place in England *(a)*. But, on the other hand, let us call to mind, that the perſon who, in England, is inveſted with the Executive authority, unites in himſelf the whole public power and majeſty. Let us repreſent to ourſelves the great and ſole Magiſtrate of the Nation, preſſing the acceptance of thoſe laws which he had propoſed, with a vehemence ſuited to the uſual importance of his deſigns, with the warmth of Monarchical pride, which muſt meet with no refuſal, and exerting for that purpoſe all his immenſe reſources.

It was therefore a matter of indiſpenſable neceſſity, that things ſhould be ſettled in England in the manner that they are. As the moving ſprings of the Executive power are, in the hands of the King a kind of ſacred

(a) I particularly mean here, the circumſtance of the People having entirely delegated their power to their Repreſentatives: the conſequences of which Inſtitution will be diſcuſſed in the next Chapter.

depoſitum, ſo are likewiſe thoſe of the Legiſlative power, in the hands of the two Houſes. The King muſt abſtain from touching them, in the ſame manner as all the ſubjects of the kingdom are bound religiouſly to ſubmit to his prerogatives. When he ſits in Parliament, he has left, we may ſay, his executive power without doors, and can only aſſent or diſſent. If the Crown had been allowed to take an active part in the buſineſs of making laws, it would ſoon have rendered uſeleſs the other branches of the Legiſlature.

CHAP. V.

In which an Inquiry is made, whether it would be an Advantage to public Liberty that the Laws ſhould be enacted by the Votes of the People at large.

BUT it will be ſaid, whatever may be the wiſdom of the Engliſh Laws, how great ſoever their precautions may be with regard to the ſafety of the individual, the People, as they do not expreſsly enact them, cannot be looked upon as a free People. The Author of the *Social Contract* carries this opi-

nion even farther; he ſays, that, "though "the people of England think they are free, "they are much miſtaken; they are ſo only "during the election of Members for Par-"liament: as ſoon as theſe are elected, the "People are ſlaves—they are nothing *(a)*."

Before I anſwer this objection, I ſhall obſerve that the word *Liberty* is one of thoſe which have been moſt miſunderſtood or miſapplied.

Thus, at Rome, where that claſs of Citizens who were really the Maſters of the State, were ſenſible that a lawful regular authority, once truſted to a ſingle Ruler, would put an end to their tyranny, they taught the People to believe, that, provided thoſe who exerciſed a military power over them, and overwhelmed them with inſults, went by the names of *Conſules*, *Dictatores*, *Patricii*, *Nobiles*, in a word, by any other appellation than that horrid one of *Rex*, they were free, and that ſuch a valuable ſituation muſt be preſerved at the price of every calamity.

In the ſame manner, certain Writers of the preſent age, miſled by their inconſiderate admiration of the Governments of ancient

(*a*) See M. Rouſſeau's Social Contract, chap. xv.

times, and perhaps alſo by a deſire of preſenting lively contraſts to what they call the degenerate manners of our modern times, have cried up the governments of Sparta and Rome, as the only ones fit for us to imitate. In their opinions, the only proper employment of a free Citizen is, *to be either inceſſantly aſſembled in the forum* or *preparing for war.—Being valiant, inured to hardſhips, inflamed with an ardent love of one's Country*, which is, after all, nothing more than an ardent deſire of injuring all Mankind for the ſake of the Society of which we are Members; *and with an ardent love of glory*, which is likewiſe nothing more than an ardent deſire of committing ſlaughter, in order to make afterwards a boaſt of it, have appeared to theſe Writers to be the only ſocial qualifications worthy of our eſteem, and of the encouragement of law-givers *(a)*. And while, in order to ſupport ſuch opinions, they have uſed a profuſion of exaggerated expreſſions without any diſtinct meaning, and perpetually repeated, though without defining them, the words *daſtardlineſs*, *corruption*, *greatneſs of*

(*a*) I have uſed the above expreſſions in the ſame ſenſe in which they were uſed in the ancient Commonwealths, and they ſtill are by moſt of the Writers who deſcribe their Governments.

ſoul and *virtue*, they have never once thought of telling us the only thing that was worth our knowing, which is, whether Men were happy under thoſe Governments which they ſo much exhorted us to imitate.

And while they thus miſapprehended the only rational deſign of civil ſocieties, they miſtook no leſs the true end of the particular inſtitutions by which they were to be regulated. They were ſatisfied when they ſaw the few who really governed every thing in the State, at times perform the illuſory ceremony of aſſembling the body of the People, that they might appear to conſult them: and the mere giving of votes, under any diſadvantage in the manner of giving them; and how much ſoever the law might be afterwards neglected that was thus pretended to have been made in common, has appeared to them to be Liberty.

But thoſe Writers are in the right: a Man who contributes by his vote to the paſſing of a law, has himſelf made the law; in obeying it, he obeys himſelf; he therefore is free. A play on words, and nothing more. The individual who has voted in a popular legiſlative Aſſembly, has not

made the law that has paſſed in it; he has only contributed, or ſeemed to contribute, towards enacting it, for his thouſandth, or even ten thouſandth ſhare: he has had no opportunity of making his objections to the propoſed law, or of canvaſſing it, or of propoſing reſtrictions to it, and he has only been allowed to expreſs his aſſent or diſſent. When a law is paſſed agreeably to his vote, it is not as a conſequence of this his vote that his will happens to take place; it is becauſe a number of other Men have accidentally thrown themſelves on the ſame ſide with him:—when a law contrary to his intentions is enacted, he muſt nevertheleſs ſubmit to it.

This is not all; for though we ſhould ſuppoſe, that to give a vote is the eſſential conſtituent of liberty, yet ſuch liberty could only be ſaid to laſt for a ſingle moment, after which it becomes neceſſary to truſt entirely to the diſcretion of other perſons, that is, according to this doctrine, to be no longer free. It becomes neceſſary, for inſtance, for the Citizen who has given his vote, to rely on the honeſty of thoſe who collect the ſuffrages; and more than once have falſe declarations been made of them.

The Citizen muſt alſo truſt to other perſons for the execution of thoſe things which have been reſolved upon in common: and when the Aſſembly ſhall have ſeparated, and he ſhall find himſelf alone, in the preſence of the Men who are inveſted with the public power, of the Conſuls, for inſtance, or of the Dictator, he will have but little ſecurity for the continuance of his liberty, if he has only that of having contributed by his ſuffrage towards enacting a law which they are determined to neglect.

What then is Liberty? Liberty, I would anſwer, ſo far as it is poſſible for it to exiſt in a Society of Beings, whoſe intereſts are almoſt perpetually oppoſed to each other, conſiſts in this, that, *every Man, while he reſpects the perſons of others, and allows them quietly to enjoy the produce of their induſtry, be certain himſelf likewiſe to enjoy the produce of his own induſtry, and that his perſon be alſo ſecure.* But to contribute by one's ſuffrage to procure theſe advantages to the Community,—to have a ſhare in eſtabliſhing that order, that general arrangement of things, by means of which an individual, loſt as it were in the croud, is effectually protected,—to lay down the rules to be obſerved by thoſe

who, being inveſted with a conſiderable power, are charged with the defence of individuals, and provide that they ſhould never tranſgreſs them,—theſe are functions, are acts of Government, but not conſtituent parts of Liberty.

To expreſs the whole in two words: to concur by one's ſuffrage in enacting laws, is to enjoy a ſhare, whatever it may be, of Power; to live in a ſtate where the laws are equal for all, and ſure to be executed (whatever may be the means by theſe advantages are attained) is to be free.

Be it ſo; we grant that to give one's ſuffrage is not liberty itſelf, but only a means of procuring it, and a means too which may degenerate to mere form; we grant alſo, that it is poſſible that other expedients might be found for that purpoſe, and that, for a Man to decide that a State with whoſe Government and interior adminiſtration he is unacquainted, is a State in which the People *are ſlaves, are nothing*, merely becauſe the *Comitia* of ancient Rome are no longer to be met with in it, is a ſomewhat precipitate deciſion. But ſtill we muſt continue to think that liberty would be much more complete, if the People at large were expreſsly called upon to

give their opinion concerning the particular proviſions by which it is to be ſecured, and that the Engliſh laws, for inſtance, if they were made by the ſuffrages of all, would be wiſer, more equitable, and above all, more likely to be executed. To this objection, which is certainly ſpecious, I ſhall endeavour to give an anſwer.

If, in the firſt formation of a civil Society, the only care to be taken was that of eſtabliſhing, once for all, the ſeveral duties which every individual owes to others, and to the State,—if thoſe who are intruſted with the care of procuring the performance of theſe duties, had neither any ambition, nor any other private paſſions, which ſuch employment might put in motion, and furniſh the means of gratifying, in a word, if looking upon their function as a mere taſk of duty, they never were tempted to deviate from the intentions of thoſe who had appointed them, I confeſs that in ſuch a caſe, there might be no inconvenience in allowing every individual to have a ſhare in the government of the community of which he is a member; or rather, I ought to ſay, in ſuch a Society, and among ſuch Beings, there would be no occaſion for any Government,

But experience teaches us that many more precautions, indeed, are neceſſary to oblige Men to be juſt towards each other: nay, the very firſt expedients that may be expected to conduce to ſuch an end, ſupply the moſt fruitful ſource of the evils which are propoſed to be prevented. Thoſe laws which were intended to be equal for all, are ſoon warped to the private convenience of thoſe who have been made the adminiſtrators of them:—inſtituted at firſt for the protection of all, they ſoon are made only to defend the uſurpations of a few; and as the People continue to reſpect them, while thoſe to whoſe guardianſhip they were intruſted make little account of them, they at length have no other effect than that of ſupplying the want of real ſtrength in thoſe few who have contrived to place themſelves at the head of the community, and of rendering regular and free from danger the tyranny of the ſmaller number over the greater.

To remedy, therefore, evils which thus have a tendency to reſult from the very nature of things,—to oblige thoſe who are in a manner Maſters of the law, to conform themſelves to it,—to render ineffectual the ſilent, powerful, and ever active conſpiracy of thoſe who govern, requires a degree of knowledge

and a ſpirit of perſeverance, which are not to be expected from the multitude.

The greater part of thoſe who compoſe this multitude, taken up with the care of providing for their ſubſiſtence, have neither ſufficient leiſure, nor even, in conſequence of their more imperfect education, the degree of information requiſite for functions of this kind. Nature, beſides, who is ſparing of her gifts, has beſtowed upon only a few Men an underſtanding capable of the complicated reſearches of Legiſlation; and, as a ſick Man truſts to his Phyſician, a Client to his Lawyer, ſo the greater number of the Citizens muſt truſt to thoſe who have more abilities than themſelves for the execution of things which, at the ſame time that they ſo materially concern them, require ſo many qualifications to perform them with any degree of ſufficiency.

To theſe conſiderations, of themſelves ſo material, another muſt be added, which is, if poſſible, of ſtill greater weight. This is, that the multitude, in conſequence of their very being a multitude, are incapable of coming to any mature reſolution.

Thoſe who compoſe a popular Aſſembly, are not actuated, in the courſe of their de-

liberations, by any clear and preciſe view of any preſent or perſonal intereſt. As they ſee themſelves loſt, as it were, in the croud of thoſe who are called upon to exerciſe the ſame function with themſelves—,as they know that their individual votes will make no change in the public reſolution, and that, to whatever ſide they may incline, the general reſult will nevertheleſs be the ſame, they do not undertake to inquire how far the things propoſed to them agree with the whole of the laws already in being, or with the preſent circumſtances of the State, becauſe Men will not enter upon a laborious taſk, when they know that it will not anſwer any purpoſe.

It is, however, with diſpoſitions of this kind, and each relying on all, that the Aſſembly of the People meets. But as very few among them have previouſly conſidered the ſubjects on which they are called to determine, very few carry along with them any opinion or inclination, or at leaſt any inclination of their own, and to which they are reſolved to adhere. As however it is neceſſary at laſt to come to ſome reſolution, the major part of them are determined by reaſons which they would bluſh to pay any regard to, on much leſs ſe-

rious occaſions. An unuſual ſight, a change of the ordinary place of the Aſſembly, a ſudden diſturbance, a rumour, are, amidſt the general want of a ſpirit of deciſion, the *ſufficiens ratio* of the determination of the greateſt part; (a) and from this aſſemblage of ſeparate wills thus formed haſtily and without reflection, a general will reſults, which is alſo void of reflection.

If, amidſt theſe diſadvantages, the Aſſembly were left to themſelves, and no body had an intereſt to lead them into error, the evil, though very great, would not however be extreme, becauſe ſuch an aſſembly never being called but to determine upon an affirmative or negative, that is, never having but two caſes to chooſe between, there would be an equal chance for their chooſing either; and it might be hoped that at every other turn they would take the right ſide.

But the combination of thoſe who ſhare either in the exerciſe of the public Power, or

(a) Every one knows of how much importance it was in the Roman Commonwealth, to aſſemble the People, rather in one place than another. In order to change entirely the nature of their reſolutions, it was often ſufficient to hide from them, or let them ſee, the Capitol.

in its advantages, do not thus allow themſelves to ſit down in inaction. They wake, while the People ſleep. Entirely taken up with the thoughts of their power, they live but to increaſe it. Deeply verſed in the management of public buſineſs, they ſee at once all the poſſible conſequences of meaſures. And as they have the excluſive direction of the ſprings of Government, they give riſe, at their pleaſure, to every incident that may influence the minds of a multitude who are not on their guard, and who wait for ſome event or other that may finally determine them.

It is they who convene the Aſſembly, and diſſolve it; it is they who offer propoſitions and make ſpeeches to it. Ever active in turning to their advantage every circumſtance that happens, they equally avail themſelves of the tractableneſs of the People during public calamities, and its heedleſſneſs in times of proſperity. When things take a different turn from what they expected, they diſmiſs the Aſſembly. By preſenting to it many propoſitions at once, and which are to be voted upon in the lump, they hide what is deſtined to promote their private views, or give a colour to it by joining it with things which they know will take hold of the minds

of the People *(a)*. By preſenting in their ſpeeches, arguments and facts which Men have no time to examine, they lead the People into groſs, and yet deciſive errors; and the common-places of rhetoric, ſupported by their perſonal influence, ever enable them to draw to their ſide the majority of votes.

On the other hand, the few (for there are after all ſome) who, having meditated on the propoſed queſtion, ſee the conſequences of the deciſive ſtep which is juſt going to be taken, being loſt in the croud, cannot make their feeble voices to be heard in the midſt of the univerſal noiſe and confuſion. They have it no more in their power to ſtop the general motion, than a Man in the midſt of an army on a march, has it in his power to avoid marching. In the mean time, the People are giving their ſuffrages; a majority

(a) It was thus the Senate, at Rome, aſſumed to itſelf the power of laying taxes. They promiſed in the time of the war againſt the Veientes, to give pay to ſuch Citizens as would inliſt; and to that end they eſtabliſhed a tribute. The People, ſolely taken up with the idea of not going to war at their own expence, were tranſported with ſo much joy, that they crouded at the door of the Senate, and laying hold of the hands of the Senators, called them their Fathers—*Nihil unquam acceptum à plebe tanto gaudio traditur: concurſum itaque Curiam eſſe, prehenſataſque exeuntium manus, Patres vero appellatos, &c.* See Tit. Liv. book iv.

appears in favour of the propoſal; it is finally proclaimed as the general will of all; and it is at bottom nothing more than the effect of the artifices of a few deſigning Men, who are exulting among themſelves (*a*).

(*a*) I might confirm all theſe things by numberleſs inſtances from ancient Hiſtory; but, if I may be allowed, in this caſe, to draw examples from my own Country, *& celebrare domeſtica facta*, I ſhall relate facts which will be no leſs to the purpoſe. In Geneva, in the year 1707, a law was enacted, that a General Aſſembly of the People ſhould be held every five years, to treat of the affairs of the Republic; but the Magiſtrates, who dreaded thoſe Aſſemblies, ſoon obtained from the Citizens themſelves the repeal of the law; and the firſt reſolution of the People, in the firſt of theſe periodical Aſſemblies (in the year 1712) was to aboliſh them for ever. The profound ſecrecy with which the Magiſtrates prepared their propoſal to the Citizens on that ſubject, and the ſudden manner in which the latter, when aſſembled, were acquainted with it, and made to give their votes upon it, have indeed accounted but imperfectly for this ſtrange determination of the People; and the conſternation which ſeized the whole Aſſembly when the reſult of the ſuffrages was proclaimed, has confirmed many in the opinion, that ſome unfair means had been uſed. The whole tranſaction has been kept ſecret to this day; but the common opinion on this ſubject, which has been adopted by M. Rouſſeau in his *Lettres de la Montagne*, is this: the Magiſtrates, it is ſaid, had privately inſtructed the Secretaries in whoſe *ears* the Citizens were to *whiſper* their ſuffrages: when a Citizen ſaid, *approbation*, he was underſtood to approve the propoſal of the Magiſtrates; when he ſaid, *rejection*, he was underſtood to reject the *periodical Aſſemblies*.

In a word, thoſe who are acquainted with Republican Governments, and in general, who know the manner in which buſineſs is tranſacted in numerous Aſſemblies, will not ſcruple to affirm, that the few who are united together, who take an active part in public affairs, and whoſe ſtation makes them conſpicuous, have ſuch an advantage over the many who turn their eyes towards them,

In the year 1738, the Citizens enacted at once into laws a ſmall Code of forty-four Articles, by one ſingle line of which they bound themſelves for ever to elect the four *Syndics* (the Chiefs of the Council of the twenty-five) out of the Members of the ſame Council; whereas they were before free in their choice. They at that time ſuffered alſo the word *approved* to be ſlipped into the law mentioned in the Note *(a)* p. 185, which was tranſcribed from a former Code; the conſequence of which was to render the Magiſtrates abſolute maſters of the Legiſlature.

The Citizens had thus been ſucceſſively ſtripped of all their *political* rights, and had little more left to them than the pleaſure of being called a *Sovereign Aſſembly*, when they met (which idea, it muſt be confeſſed, preſerved among them a ſpirit of reſiſtance which it would have been dangerous for the Magiſtrates to provoke too far) and the power of at leaſt *refuſing* to elect the four *Syndics*. Upon this privilege the Citizens have, a few years ago, made their laſt ſtand: and a ſingular conjunction of circumſtances having happened at the ſame time, to raiſe and preſerve among them, during three years, an uncommon ſpirit of union and perſeverance, they have in the iſſue ſucceeded in a great meaſure to repair the injuries which they had been made to do to themſelves, for theſe laſt two hundred years and more.

and are without union among themſelves, that, even with a middling degree of ſkill, they can at all times direct, at their pleaſure, the general reſolutions;—that, as a conſequence of the very nature of things, there is no propoſal, however abſurd, to which a numerous aſſembly of Men may not, at one time or other, be brought to aſſent;—and that laws would be wiſer, and more likely to procure the advantage of all, if they were to be made by drawing lots, or caſting dice, than by the ſuffrages of a multitude.

CHAP. VI.

Advantages that accrue to the People from appointing Repreſentatives.

HOW then ſhall the People remedy the diſadvantages that neceſſarily attend their ſituation? How ſhall they reſiſt the phalanx of thoſe who have engroſſed to themſelves all the honours, dignities, and power, in the State?

It will be by employing for their defence the ſame means by which their adverſaries carry on their attacks: it will be by uſing the ſame weapons as they do, the ſame order, the ſame kind of diſcipline.

They are a ſmall number, and conſequently eaſily united;—a ſmall number muſt therefore be oppoſed to them, that a like union may alſo be obtained. It is becauſe they are a ſmall number, that they can deliberate on every occurrence, and never come to any reſolutions but ſuch as are maturely weighed—it is becauſe they are few, that they can have forms which continually ſerve them for general ſtandards to reſort to, approved maxims to which they invariably adhere, and plans which they never loſe ſight of. Here therefore, I repeat it, oppoſe to them a ſmall number, and you will obtain the like advantages.

Beſides, thoſe who govern, as a farther conſequence of their being few, have a more conſiderable ſhare, conſequently feel a deeper concern in the ſucceſs, whatever it may be, of their enterprizes. As they uſually profeſs a contempt for their adverſaries, and are at all times acting an offenſive part againſt them, they impoſe on themſelves an obligation of conquering. They, in ſhort, who are all alive from the moſt powerful incentives, and aim at gaining new advantages, have to do with a multitude, who, wanting only to preſerve what they already poſſeſs, are unavoidably liable to long intervals of inactivity and

ſupineneſs. But the People, by appointing Repreſentatives, immediately gain to their cauſe that advantageous activity which they before ſtood in need of, to put them on a par with their adverſaries; and thoſe paſſions become excited in their defenders, by which they themſelves cannot poſſibly be actuated.

Excluſively charged with the care of public liberty, the Repreſentatives of the People will be animated by a ſenſe of the greatneſs of the concerns with which they are intruſted. Diſtinguiſhed from the bulk of the Nation, and forming among themſelves a ſeparate Aſſembly, they will aſſert the rights of which they have been made the Guardians, with all that warmth which the *eſprit de corps* is uſed to inſpire *(a)*. Placed on an elevated theatre, they will endeavour to render themſelves ſtill more conſpicuous; and the art and ambitious activity of thoſe who govern, will now be encountered by the vivacity and perſeverance of opponents actuated by the love of glory.

(*a*) If it had not been for an incentive of this kind, the Engliſh Commons would not have vindicated their right of taxation with ſo much vigilance as they have done, againſt all enterprizes, often perhaps involuntary, of the Lords.

Laſtly, as the Repreſentatives of the People will naturally be ſelected from among thoſe Citizens who are moſt favoured by fortune, and will have conſequently much to preſerve, they will, even in the midſt of quiet times, keep a watchful eye on the motions of Power. As the advantages they poſſeſs will naturally create a kind of rivalſhip between them and thoſe who govern, the jealouſy which they will conceive againſt the latter, will give them an exquiſite degree of ſenſibility on every increaſe of their authority. Like thoſe delicate inſtruments which diſcover the operations of Nature, while they are yet imperceptible to our ſenſes, they will warn the People of thoſe things which of themſelves they never ſee but when it is too late; and their greater proportional ſhare, whether of real riches, or of thoſe which lie in the opinions of Men, will make them, if I may ſo expreſs myſelf, the barometers that will diſcover, in its firſt beginning, every tendency to a change in the Conſtitution *(a)*.

(*a*) All the above reaſoning eſſentially requires, that the Repreſentatives of the People ſhould be united in intereſt with the People. We ſhall ſoon ſee that this union really obtains in the Engliſh Conſtitution, and may be called the maſter-piece of it.

CHAP. VII.

The Subject continued—The Advantages that accrue to the People from their appointing Repreſentatives, are very inconſiderable, unleſs they alſo entirely truſt their Legiſlative Authority to them.

THE obſervations made in the preceding Chapter are ſo obvious, that the People themſelves, in popular Governments, have always been ſenſible of the truth of them, and never thought it poſſible to remedy, by themſelves alone, the diſadvantages neceſſarily attending their ſituation. Whenever the oppreſſions of their Rulers have forced them to reſort to ſome uncommon exertion of their legal powers, they have immediately put themſelves under the direction of thoſe few Men who had been inſtrumental in informing and encouraging them; and when the nature of the circumſtances has required any degree of firmneſs and perſeverance in their conduct, they never have been able to attain the ends they propoſed to themſelves, but by means of the moſt implicit deference to thoſe Leaders whom they had thus appointed.

But as theſe Leaders, thus haſtily choſen, are eaſily intimidated by the continual diſplay which is made before them of the terrors of Power, as that unlimited confidence which the People now repoſe in them, only takes place when public liberty is in the utmoſt danger, and cannot be kept up otherwiſe than by an extraordinary conjunction of circumſtances, and in which thoſe who govern ſeldom ſuffer themſelves to be caught more than once, the People have conſtantly ſought to avail themſelves of the ſhort intervals of ſuperiority which the chance of events had given them, for rendering durable thoſe advantages which they knew would, of themſelves, be but tranſitory, and for getting ſome perſons appointed, whoſe peculiar office it ſhould be to protect them, and whom the Conſtitution ſhould thenceforwards recognize. It is thus that the People of Lacedæmon obtained their Ephori, and the People of Rome their Tribunes.

We grant this, will it be ſaid; but the Roman People never allowed their Tribunes *to conclude any thing definitively*; they, on the contrary, reſerved to themſelves the right of *ratifying* (*a*) any reſolutions the latter ſhould take. This, I anſwer, was the very circum-

(*a*) See Rouſſeau's Social Contract.

ſtance that rendered the inſtitution of Tribunes totally ineffectual in the event. The People thus wanting to interfere with their own opinions, in the reſolutions of thoſe on whom they had, in their wiſdom, determined entirely to rely, and endeavouring to ſettle with an hundred thouſand votes, things which would have been ſettled equally well by the votes of their adviſers, defeated in the iſſue every beneficial end of their former proviſions; and while they meant to preſerve an appearance of their ſovereignty, (a chimerical appearance, ſince it was under the direction of others that they intended to vote) they fell back into all thoſe inconveniences which we have before mentioned.

The Senators, the Conſuls, the Dictators, and the other great Men in the Republic, whom the People were prudent enough to fear, and ſimple enough to believe, continued ſtill to mix with them, and play off their political artifices. They continued to make ſpeeches to them *(a)*, and ſtill availed them-

(a) Valerius Maximus relates that the Tribunes of the People having offered to propoſe ſome regulations in regard to the price of corn; in a time of great ſcarcity, Scipio Naſica over-ruled the Aſſembly merely by ſaying, "Silence Romans; I know better than you what is "expedient for the Republic. Which words were no "ſooner heard by the People, than they ſhewed by a

ſelves of their privilege of changing at their pleaſure the place and form of the public meetings. When they did not find it poſſible by ſuch means to direct the reſolutions of the Aſſemblies, they pretended that the omens were not favourable, and under this pretext, or others of the ſame kind, they diſſolved them *(a)*. And the Tribunes, when they had ſucceeded ſo far as to effect an union among themſelves, thus were obliged to ſubmit to the mortification of ſeeing thoſe projects which they had purſued with infinite labour, and even through the greateſt dangers, irrecoverably defeated by the moſt deſpicable artifices.

When, at other times, they ſaw that a confederacy was carrying on with uncommon warmth againſt them, and deſpaired of ſuc-

" ſilence full of veneration, that they were more affected " by his authority, than by the neceſſity of providing " for their own ſubſiſtence."—*Tacete, quæſo, Quirites. Plus enim ego quam vos quid reipublicæ expediat intelligo. Quâ voce auditâ, omnes pleno venerationis ſilentio, majorem ejus autoritatis quam alimentorum ſuorum curam egerunt.*

(*a*) *Quid enim majus eſt, ſi de jure Augurum quæri, aus*, ſays Tully, who himſelf was an Augur, and a Senator into the bargain, *quàm poſſe a ſummis imperiis & ſummis poteſtatibus Comitiatus & Concilia, vel inſtituta dimittere, vel habita recindere! Quid gravius, quam rem ſuſceptam dirimi, ſi unus Augur* ALIUM (id eſt, alium diem) *dixerit!* — See De Legib. lib. ii. § 12.

ceeding by employing expedients of the above kind, or were afraid of diminiſhing their efficacy by a too frequent uſe of them, they betook themſelves to other ſtratagems. They then conferred on the Conſuls, by the means of a ſhort form of words for the occaſion (*a*), an abſolute power over the lives of the Citizens, or even appointed a Dictator. The People, at the ſight of the State maſquerade which was diſplayed before them, were ſure to ſink into a ſtate of conſternation; and the Tribunes, however clearly they might ſee through the artifice, alſo trembled in their turn, when they thus beheld themſelves left without defenders (*b*).

At other times, they brought falſe accuſations againſt the Tribunes before the Aſſembly itſelf; or, by privately ſlandering them with the People, they totally deprived them of their confidence. It was through artifices of this kind, that the People were brought to behold, without concern, the murder of Tiberius

(*a*) *Videat Conſul ne quid detrimenti Reſpublica capiat.*

(*b*) "The Tribunes of the People," ſays Livy, who was a great admirer of the Ariſtocratical power, "and the People themſelves, durſt neither lift up their eyes, nor even mutter, in the preſence of the Dictator." *Nec adverſus Dictatoriam vim, aut Tribuni plebis, aut ipſa Plebs, attollere oculos, aut hiſcere, audebant*—See Tit. Liv. lib. vi. § 16.

Gracchus, the only Roman that was really virtuous,—the only one who truly loved the People. It was alſo in the ſame manner that Caius, who was not deterred by his brother's fate, from purſuing the ſame plan of conduct, was in the end ſo entirely forſaken by the People, that nobody could be found among them who would even lend him a horſe to fly from the fury of the Nobles; aud he was at laſt compelled to lay violent hands upon himſelf, while he invoked the wrath of the Gods on his inconſtant fellow-citizens.

At other times, they raiſed diviſions among the People. Formidable combinations manifeſted themſelves, on a ſudden, on the eve of important tranſactions; and all moderate Men avoided attending Aſſemblies, where they ſaw that all was to be tumult and confuſion.

In fine, that nothing might be wanting to the inſolence with which they treated the Aſſemblies of the People, they ſometimes falſified the declarations of the number of the votes; they even once went ſo far as to carry off the urns into which the Citizens were to throw their ſuffrages (*a*).

(*a*) The reader with reſpect to all the above obſervations, may ſee Plutarch's Lives, particularly the Lives of the two Gracchi. I muſt add, that I have avoided

CHAP. VIII.

The Subject concluded.—Effects that have reſulted, in the Engliſh Government, from the People's Power being completely delegated to their Repreſentatives.

BUT when the People have entirely truſted their power to a moderate number of perſons, affairs immediately take a widely different turn. Thoſe who govern are from that moment obliged to leave off all thoſe ſtratagems which had hitherto enſured their ſucceſs. Inſtead of thoſe Aſſemblies which they affected to deſpiſe, and were perpetually comparing to ſtorms, or to the current of the *Euripus (a)*,

drawing any inſtance from thoſe Aſſemblies in which one half of the people were made to arm themſelves againſt the other. I have here only alluded to thoſe times which immediately either preceded or followed the third Punic war, that is, of thoſe which are commonly called the *beſt period* of the Republic.

(*a*) Tully makes no end of his ſimiles on this ſubject. *Quod enim fretum, quem Euripum, tot motus, tantas & tàm varias habere putatis agitationes fluctuum, quantas perturbationes & quantos æſtus habet ratio Comitiorum?* See Orat. pro Muræná.—*Concio*, ſays he in another place, *quæ ex imperitiſſimis conſtat, &c.* De Amicitiâ, § 25.

and in regard to which they accordingly thought themſelves at liberty to paſs over the rules of Juſtice, they now find that they have to deal with Men who are their equals in point of education and knowledge, and their inferiors only in point of rank and form. They, in conſequence, ſoon find it neceſſary to adopt quite different methods; and, above all, become very careful not to talk to them any more about the ſacred chickens, the *white* or *black* days, and the Sibylline books.—As they ſee their new adverſaries expect to have a proper regard paid to them, that ſingle circumſtance inſpires them with it:—as they ſee them act in a regular manner, obſerve conſtant rules, in a word, proceed with *form*, they come to look upon them with reſpect, from the very ſame reaſon which makes them themſelves to be reverenced by the people.

The Repreſentatives of the People, on the other hand, do not fail ſoon to procure for themſelves every advantage that may enable them effectually to uſe the powers with which they have been intruſted, and to adopt every rule of proceeding that may make their reſolutions to be truly the reſult of reflection and deliberation. Thus it was that the Repreſentatives of the Engliſh Nation, ſoon after their

firſt eſtabliſhment, became formed into a ſeparate Aſſembly; they afterwards obtained the liberty of appointing a Preſident :—ſoon after, they inſiſted upon their being conſulted on the laſt form of the Acts to which they had given riſe :—laſtly, they inſiſted on thenceforth framing them themſelves.

In order to prevent any poſſibility of ſurpriſe in the courſe of their proceedings, it is a ſettled rule with them, that every propoſition, or bill, muſt be read three times, at different prefixed days, before it can receive a final ſanction: and before each reading of the bill, as well as at its firſt introduction, an expreſs reſolution muſt be taken to continue it under conſideration. If the bill be rejected, in any one of thoſe ſeveral operations, it muſt be dropped, and cannot be propoſed again during the ſame Seſſion (*a*).

(*a*) It is moreover a ſettled rule in the Houſe of Commons, that no Member is to ſpeak more than once in the ſame day. When the number and nature of the clauſes of a Bill require that it ſhould be diſcuſſed in a freer manner, a Committee is appointed for that purpoſe, who are to make their report afterwards to the Houſe. When the ſubject is of importance, this Committee is formed of the whole Houſe, which ſtill continues to ſit in the ſame place, but in a leſs ſolemn manner, and under another Preſident, who is called the Chairman of the Committee. In order to form the Houſe again the

The Commons have been, above all, jealous of the freedom of ſpeech in their aſſembly. They have expreſly ſtipulated, as we have above mentioned, that none of their words or ſpeeches ſhould be queſtioned in any place out of their Houſe. In fine, in order to keep their deliberations free from every kind of influence, they have not allowed their Preſident to give his vote, or even his opinion:—they moreover have ſettled it as a rule, not only that the King could not ſend to them any expreſs propoſals about laws, or other ſubjects, but even that his name ſhould never be mentioned in the deliberations (*a*).

But the circumſtance which, of all others, conſtitutes the ſuperior excellence of a Government in which the People act only through their Repreſentatives, that is, by means of an aſſembly formed of a moderate number of perſons, and in which every Member has it in his power to propoſe new ſubjects, and to argue and to canvaſs the queſtions that ariſe, is that

mace is replaced on the Table, and the Speaker goes again into his chair.

(*a*) If any perſon were to mention in his ſpeech, what the King *wiſhes ſhould be, would be glad to ſee*, &c. he would be immediately *called to order*, for attempting to *influence the debate*.

ſuch a Conſtitution is the only one that is capable of the immenſe advantage, and of which I do not know if I have been able to convey an adequate idea to my readers when I mentioned it before (*a*), I mean that of putting into the hands of the People the moving ſprings of the Legiſlative authority.

In a Conſtitution where the People at large exerciſe the function of enacting the Laws, as it is only to thoſe perſons towards whom the Citizens are accuſtomed to turn their eyes, that is, to the very Men who govern, that the Aſſembly have either time or inclination to liſten, they acquire, at length, as has conſtantly been the caſe in all Republics, the excluſive right of propoſing, if they pleaſe, when they pleaſe, in what manner they pleaſe. A prerogative this, of ſuch extent, that it would ſuffice to put an Aſſembly formed of Men of the greateſt parts, at the mercy of a few dunces, and renders completely illuſory the boaſted power of the People. Nay more, as this prerogative is thus placed in the very hands of the adverſaries of the People, it forces the People to remain expoſed to their attacks, in a condition perpetually paſſive,

(*a*) See chap. iv. of this Book.

and takes from them the only legal means by which they might effectually oppoſe their uſurpations.

To expreſs the whole in a few words. A *repreſentative* Conſtitution places the remedy in the hands of thoſe who feel the diſorder; but a *popular* Conſtitution places the remedy in the hands of thoſe who cauſe it; and it is neceſſarily productive, in the event, of the misfortune, of the political calamity, of truſting the care and the means of repreſſing the invaſions of power, to the Men who have the enjoyment of power.

CHAP. IX.

A farther Diſadvantage of Republican Governments.—The People are neceſſarily betrayed by thoſe in whom they truſt.

HOWEVER, thoſe general aſſemblies of a People who were made to determine upon things which they neither underſtood nor examined,—that general confuſion in which the Ambitious could at all times hide their artifices, and carry on their ſchemes with ſafety, were not the only evils attending the ancient Commonwealths. There was a more ſecret

defect, and a defect that ſtruck immediately at the very vitals of it, inherent in that kind of Government.

It was impoſſible for the People ever to have faithful defenders. Neither thoſe whom they had expreſly choſen, nor thoſe whom ſome perſonal advantages enabled to govern the Aſſemblies, (for the only uſe, I muſt repeat it, which the People ever make of their power, is to give it away, or allow it to be taken from them) could poſſibly be united to them by any common feeling of the ſame concerns. As their influence put them, in a great meaſure, upon a level with thoſe who were inveſted with the executive authority, they cared little to reſtrain oppreſſions out of the reach of which they ſaw themſelves placed. Nay, they feared they ſhould thereby leſſen a power which they knew was one day to be their own; if they had not even already an actual ſhare in it *(a)*.

Thus, at Rome, the only end which the Tribunes ever purſued with any degree of fin-

(a) How could it be expected, that Men who entertained views of being Prætors, would endeavour to reſtrain the power of the Prætors,—that Men who aimed at being one day Conſuls, would wiſh to limit the power of the Conſuls,—that Men whom their intereſt with the People made ſure of getting into the Senate, would ſeriouſly endeavour to confine the authority of the Senate?

cerity and perſeverance, was to procure to the People, that is, to themſelves, an admiſſion to all the different dignities in the Republic. After having obtained that a law ſhould be enacted for admitting the Plebeians to the Conſulſhip, they procured for them the liberty of intermarrying with the Patricians. They afterwards got them admitted to the Dictatorſhip, to the office of military Tribune, to the Cenſorſhip: in a word, the only uſe they made of the power of the People, was to increaſe Prerogatives which they called the prerogatives of all, but which they and their friends alone, were ever likely to enjoy.

But we do not find that they ever employed the power of the People in things really beneficial to the People. We do not find, that they ever ſet bounds to the terrible power of its Magiſtrates, that they ever repreſſed that claſs of Citizens who knew how to make their crimes paſs uncenſured; in a word, that they ever endeavoured, on the one hand to regulate, and on the other to ſtrengthen, the judicial power; precautions theſe, without which men might ſtruggle to the end of time, and never attain true liberty *(a)*.

(a) Without ſuch precautions, laws muſt always be, as Mr. Pope expreſſes it,

"Still for the ſtrong too weak, the weak too ſtrong."

And indeed the judicial power, that ſure *criterion* of the goodneſs of a Government, was always, at Rome, a mere inſtrument of tyranny. The Conſuls were at all times inveſted with an abſolute power over the lives of the Citizens. The Dictators poſſeſſed the ſame right: ſo did the Prætors, the Tribunes of the People, the judicial Commiſſioners named by the Senate, and ſo, of courſe, did the Senate itſelf; and the fact of the three hundred and ſeventy deſerters whom it commanded to be thrown down, at one time, as Livy relates, from the Tarpeian rock, ſufficiently ſhews that it well knew how to exert its power upon occaſion.

It even may be ſaid, that, at Rome, the power of life and death, or rather the right of killing was annexed to every kind of authority whatever, even to that which reſults from mere influence, or wealth; and the only conſequence of the murder of the Gracchi, which was accompanied by the ſlaughter of three hundred, and afterwards of four thouſand unarmed Citizens, whom the Nobles *knocked on the head*, was to engage the Senate to erect a Temple to *Concord*. The *Lex Porcia de tergo civium*, which has been ſo much celebrated, was attended with no other effect but that of more completely ſecuring againſt the danger of a retaliation, ſuch Conſuls, Prætors, Quæſtors, &c.

as, like Verres, cauſed the inferior Citizens of Rome to be ſcourged with rods, and put to death upon croſſes, through mere caprice and cruelty *(a)*.

In fine, nothing can more completely ſhew to what degree the Tribunes had forſaken the intereſts of the People, whom they were appointed to defend, than thatthey had allowed the Senate to inveſt itſelf with the power of taxation; they even ſuffered it to aſſume to itſelf the power, not only of diſpenſing with the laws, but alſo of abrogating them *(b)*.

(*a*) If we turn our eyes to Lacedæmon, we ſhall ſee, from ſeveral inſtances of the juſtice of the Ephori, that matters were little better ordered there, in regard to the adminiſtration of public juſtice, And in Athens itſelf, which is the only one of the ancient Commonwealths in which the people ſeem to have enjoyed any degree of real liberty, we ſee the Magiſtrates proceed nearly in the ſame manner as they now do among the Turks: and I think no other proof needs be given of this than the ſtory of the Barber in the Piræus, who having ſpread about the Town the news of the overthrow of the Athenians in Sicily, which he had heard from a ſtranger who had ſtopped at his ſhop, was put to the torture, by the command of the Archons, becauſe he could not tell the name of his author.—See *Plut. Life of Nicias.*

(*b*) There are frequent inſtances of the Conſuls taking away from the Capitol the tables of the laws paſſed under their predeceſſors. Nor was this, as we might at firſt be tempted to believe, an act of violence which

In a word, as a neceſſary conſequence of the *communicability* of power, a circumſtance eſſentially inherent in the republican form of government, it is impoſſible for it ever to be reſtrained within certain rules. Thoſe who are in a condition to control it, from that very circumſtance, become its defenders. Though they may have riſen, as we may ſuppoſe, from the humbleſt ſtations, and ſuch as ſeemed totally to preclude them from all ambitious views, they have no ſooner reached a certain degree of eminence, than they begin to aim at higher. Their endeavours had at firſt no other object, as they profeſſed, and perhaps with ſincerity, than to ſee the laws impartially executed: their only view now is to ſet themſelves above them; and ſeeing themſelves raiſed to the level of a claſs of Men who poſ-

ſucceſs alone could juſtify; it was a conſequence of the acknowledged power enjoyed by the Senate, *cujus erat graviſſimum judicium de jure legum*, as we may ſee in ſeveral places in Tully. Nay, the Augurs themſelves, as Tully informs us, enjoyed the ſame privilege. "If laws "have not been laid before the people, in the legal "form, they (the Augurs) may ſet them aſide; as was "done with reſpect to the *Lex Tetia* by the decree of "the College, and to the *leges Liviæ*, by the advice of "Philip, who was Conſul and Augur." *Legem, ſi non jure rogata eſt, tollere poſſunt; ut Tetiam, decreto Collegii; ut Livias, conſilio Philippi, Conſulis & Auguris*—See de Legib. lib. ii. § 12.

ſeſs all the power, and enjoys all the advantages, in the State, they make haſte to aſſociate themſelves with them (*a*).

Perſonal power and independence on the laws, being, in ſuch States, the immediate conſequence of the favour of the People, they are under an unavoidable neceſſity of being betrayed. Corrupting, as it were, every thing they touch, they cannot ſhow a preference to a Man, but they thereby attack his virtue; they cannot raiſe him, without immediately loſing him, and weakening their own cauſe; nay, they inſpire him with views directly op-

(*a*) Which always proves an eaſy thing. It is in Commonwealths the particular care of that claſs of Men who are at the head of the State, to keep a watchful eye over the People, in order to draw over to their own party any Man who happens to acquire a conſiderable influence among them; and this they are (and indeed muſt be) the more attentive to do, in proportion as the nature of the Government is more democratical.

The Conſtitution of Rome had even made expreſs proviſions on that ſubject. Not only the Cenſors could at once remove any Citizen into what Tribe they pleaſed, and even into the Senate (and we may eaſily believe, that they made a political uſe of this privilege), but it was alſo a ſettled rule, that all perſons who had been promoted to any public office by the People, ſuch as the Conſulſhip, the Edileſhip, or Tribuneſhip, became *ipſo facto*, members of the Senate.—See Middleton's *Diſſertation on the Roman Senate*.

poſite to their own, and ſend him to join and increaſe the number of their enemies.

Thus, at Rome, after the feeble barrier which excluded the People from offices of power and dignity had been thrown down, the great Plebeians, whom the votes of the People began to raiſe to thoſe offices, were immediately received into the Senate, as has been juſt now obſerved. From that period, their families began to form, in conjunction with the ancient Patrician families, a new combination, or political aſſociation of perſons; and, as this combination was formed of no particular claſs of Citizens *(a)*, but of all thoſe in general who had influence enough to gain admittance into it, only a ſingle overgrown head was now to be ſeen in the Republic, which, conſiſting of all thoſe who had either wealth or power of any kind, and diſpoſing at will of the laws and the power of the People *(b)* ſoon loſt all regard to moderation and decency.

(a) See the Note *(a)* chap. 11. of this book.

(b) It was, in ſeveral reſpects a misfortune for the People of Rome, whatever may have been ſaid to the contrary by the Writers on this ſubject, that the diſtinction between the Patricians and Plebeians was ever aboliſhed; though, to ſay the truth, this was an event which could not be prevented.

Every Conſtitution, therefore, whatever may be its form, which does not provide for inconveniences of the kind above mentioned, is a Conſtitution eſſentially imperfect. It is in Man himſelf that the ſource of the evils to be remedied, lies; general precautions therefore can alone prevent them. If it be a fatal error entirely to rely on the juſtice and equity of thoſe who govern, it is an error no leſs fatal to imagine, that, while virtue and moderation are the conſtant companions of thoſe who oppoſe the abuſes of Power, all ambition, all love of dominion, have retired to the other party.

Though wiſe Men ſometimes may, led aſtray by the power of names, and the heat of political contentions, loſe ſight of what ought to be their real end, they nevertheleſs know that it is not againſt the *Appii*, the *Coruncanii*, the *Cethegi*, but againſt all thoſe who can influence the execution of the laws, that precautions ought to be taken,—that it is not the Conſul, the Prætor, the Archon, the Miniſter, the King, whom we ought to dread, nor the Tribune, or the Repreſentative of the People, on whom we ought implicitly to rely; but that all thoſe perſons, without diſtinction, ought to be the objects of our jealouſy, who,

by any methods, and under any names whatſoever, have acquired the means of turning againſt each individual the collective ſtrength of all, and have ſo ordered things around themſelves, that whoever attempts to reſiſt them, is ſure to find himſelf engaged alone againſt a thouſand.

CHAP. X.

Fundamental difference between the Engliſh Government and the Governments juſt deſcribed.—In England all Executive Authority is placed out of the hands of thoſe in whom the People truſt. Uſefulneſs of the Power of the Crown.

IN what manner then, has the Engliſh Conſtitution contrived to find a remedy for evils which, from the very nature of Men and things, ſeem to be irremediable? How has it found means to oblige thoſe perſons to whom the People have given up their power, to make them effectual and laſting returns of gratitude? thoſe who enjoy an excluſive authority, to ſeek the advantage of all?—thoſe who make the laws, to make only equitable ones?—It has been by ſubjecting them themſelves to thoſe laws; and, for that purpoſe, by excluding them from all ſhare in the execution of them.

Thus, the Parliament can eſtabliſh as numerous a ſtanding army as it pleaſes; but immediately another Power comes forward, which takes the abſolute command of it, which fills all the poſts in it, and directs its motions at its pleaſure. The Parliament may lay new taxes; but immediately another Power ſeizes upon the produce of them, and alone enjoys the advantages and glory ariſing from the diſpoſal of it. The Parliament may even, if you pleaſe, repeal the laws on which the ſafety of the Subject is grounded; but it is not their own caprices and arbitrary humours, it is the caprice and paſſions of other Men, which they will have gratified, when they ſhall have thus overthrown the columns of public liberty.

And the Engliſh Conſtitution has not only excluded from any ſhare in the Execution of the laws, thoſe in whom the People truſt for the enacting of them, but it has alſo taken from them what would have had the ſame pernicious influence on their deliberations, the hope of ever invading that executive authority, and arrogating it to themſelves.

This authority has been made in England one ſingle, indiviſible prerogative; it has been made for ever the unalienable attribute of one

one perſon, marked out and aſcertained beforehand by ſolemn laws and long eſtabliſhed cuſtom; and all the active forces in the State have been left at his diſpoſal.

In order to ſecure this prerogative ſtill farther againſt all poſſibility of invaſions from individuals, it has been heightened and ſtrengthened by every thing that can attract and fix the attention and reverence of the people. The power of conferring and taking away places and employments has alſo been added to it, and ambition itſelf has thus been intereſted in its defence.

A ſhare in the Legiſlative power has alſo been given to the Man to whom this prerogative has been delegated; a paſſive ſhare indeed, and the only one that can, with ſafety to the State, be truſted to him, but by means of which he is enabled to defeat every attempt againſt his conſtitutional authority.

Laſtly, he is the only ſelf-exiſting and independent Power in the State. The Generals, the Miniſters of State, are ſo only by the continuance of his pleaſure: he would even diſmiſs the Parliament themſelves, if ever he ſaw them begin to entertain dangerous deſigns; and he needs only ſay one word to diſperſe

every power in the State that may threaten his authority. Formidable prerogatives theſe; but with regard to which we ſhall be inclined to lay aſide our apprehenſions, if we reflect, on the one hand, on the great privileges of the people by which they have been counterbalanced, and on the other, on the happy conſequences that reſult from their being thus united together.

From this unity, and, if I may ſo expreſs myſelf, this total ſequeſtration of the Executive authority, this advantageous conſequence in the firſt place follows, which has been mentioned in a preceding Chapter, that the attention of the whole Nation is directed to one and the ſame object. The People, beſides, enjoy this moſt eſſential advantage, which they would vainly endeavour to obtain under the government of many,—they can give their confidence, without giving power over themſelves, and againſt themſelves; they can appoint Truſtees, and yet not give themſelves Maſters.

Thoſe Men to whom the People have delegated the power of framing the Laws, are thereby made ſure to feel the whole preſſure of them. They can increaſe the prerogatives

of the executive authority, but they cannot inveſt themſelves with it:—they have it not in their power to command its motions, they only can unbind its hands.

They are made to derive their importance, nay they are indebted for their exiſtence, to the need in which that Power ſtands of their aſſiſtance; and they know that they would no ſooner have abuſed the truſt of the People, and completed the treacherous work, than they would ſee themſelves diſſolved, ſpurned, like inſtruments now ſpent, and become uſeleſs.

This ſame diſpoſition of things alſo prevents in England, that eſſential defect, inherent in the Government of many, which has been deſcribed in the preceding Chapter.

In that ſort of Government, the cauſe of the People, as has been obſerved, is continually deſerted and betrayed. The arbitrary prerogatives of the governing Powers are at all times either openly or ſecretly favoured, not only by thoſe in whoſe poſſeſſion they are, not only by thoſe who have good reaſon to hope that they ſhall at ſome future time ſhare in the exerciſe of them, but alſo by the whole croud of thoſe Men who, in conſequence of the natural diſpoſition of Mankind to over-

rate their own advantages, fondly imagine, either that they ſhall one day enjoy ſome branch of this governing authority, or that they are even already, in ſome way or other, aſſociated to it.

But as this authority has been made, in England, the indiviſible, unalienable attribute of one alone, all other perſons in the State are, *ipſo facto*, intereſted to confine it within its due bounds. Liberty is thus made the common cauſe of all: the laws that ſecure it are ſupported by Men of every rank and order; and the Habeas Corpus Act, for inſtance, is as zealouſly defended by the firſt Nobleman in the Kingdom, as by the meaneſt Subject.

Even the Miniſter himſelf, in conſequence of this *inalienability* of the executive authority, is equally intereſted with his fellow-citizens to maintain the laws on which public liberty is founded. He knows, in the midſt of his ſchemes for enjoying or retaining his authority, that a Court-intrigue, or a caprice, may at every inſtant confound him with the multitude, and the rancour of a ſucceſſor long kept out, ſend him to linger in the ſame jail which his temporary paſſions might tempt him to prepare for others.

In conſequence of this diſpoſition of things, great men, therefore, are made to join in a common cauſe with the People, for reſtraining the exceſſes of the governing Power; and, which is no leſs eſſential to the public welfare, they are alſo, from this ſame cauſe, compelled to reſtrain the exceſs of their own private power or influence, and a general ſpirit of juſtice is thus diffuſed through all parts of the State.

The wealthy Commoner, the Repreſentative of the People, the potent Peer, always having before their eyes the view of a formidable Power, of a Power, from the attempts of which they have only the ſhield of the laws to protect them, and which would, in the iſſue, retaliate an hundred fold upon them their acts of violence, are compelled, both to wiſh only for equitable laws, and to obſerve them with ſcrupulous exactneſs.

Let then the People dread (it is neceſſary to the preſervation of their liberty) but let them never entirely ceaſe to love, the Throne, that ſole and indiviſible ſeat of all the active powers in the State.

Let them know that it is that, which, by lending an immenſe ſtrength to the arm of Juſtice, has enabled her to bring to account as

well the moſt powerful, as the meaneſt offender,—which has ſuppreſſed, and, if I may ſo expreſs myſelf, weeded out all thoſe tyrannies, ſometimes confederated with, and ſometimes adverſe to, each other, which inceſſantly tend to grow up in the middle of civil ſocieties, and are the more terrible, in proportion as they feel themſelves to be leſs firmly eſtabliſhed.

Let them know that it is that, which, by making all honours and places depend on the will of one Man, has confined within private walls thoſe projects, the purſuit of which, in former times, ſhook the foundations of whole States,—has changed into intrigues the conflicts, the outrages of ambition,—and that thoſe contentions which, in the preſent times, afford them only matter of amuſement, are the Volcanos which ſet in flames the ancient Commonwealths.

That it is that, which, leaving to the rich no other ſecurity for his palace, than that which the peaſant has for his cottage, has united his cauſe to that of the latter, the cauſe of the powerful to that of the helpleſs, the cauſe of the Man of extenſive influence and connections, to that of him who is without friends.

It is the Throne above all, it is this jealous Power, which makes the People ſure that its

Repreſentatives never will be any thing more than its Repreſentatives; and it is the ever-ſubſiſting Carthage which vouches to it for the duration of their virtue.

CHAP. XI.

The Powers which the People themſelves exerciſe.—The Election of Members of Parliament.

THE Engliſh Conſtitution having eſſentially connected the fate of the Men to whom the People truſt their power, with that of the People themſelves, really ſeems, by that caution alone, to have procured the latter a complete ſecurity.

However, as the viciſſitude of human affairs may, in proceſs of time, realize events which at firſt had appeared moſt improbable, it might happen that the Miniſters of the Executive power, notwithſtanding the intereſt they themſelves have in the preſervation of public liberty, and in ſpite of the precautions expreſly taken in order to prevent the effect of their influence, ſhould, at length employ ſuch efficacious means of corruption as might bring about a ſurrender of ſome of the laws upon

which this public liberty is founded. And though we ſhould ſuppoſe that ſuch a danger would really be chimerical, it might at leaſt happen, that, conniving at a vicious adminiſtration, and being over liberal of the produce of the labours of the People, the Repreſentatives of the People might make them ſuffer many of the evils which attend worſe forms of Government.

Laſtly, as their duty does not conſiſt only in preſerving their conſtituents againſt the calamities of an arbitrary Government, but moreover in procuring them the beſt adminiſtration poſſible, it might happen that they would manifeſt, in this reſpect, an indifference which would, in its conſequences, amount to a real calamity.

It was therefore neceſſary, that the Conſtitution ſhould furniſh a remedy for all the above caſes; now, it is in the right of electing Members of Parliament, that this remedy lies.

When the time is come at which the commiſſion which the People had given to their delegates expires, they again aſſemble in their ſeveral Towns or Counties: on theſe occaſions they have it in their power to elect again thoſe

of their Repreſentatives whoſe former conduct they approve, and to reject thoſe who have contributed to give riſe to their complaints. A ſimple remedy this, and which only requiring, in its application, a knowledge of matters of fact, is entirely within the reach of the abilities of the People: but a remedy, at the ſame time, which is the moſt effectual that could be applied; for, as the evils complained of ariſe merely from the peculiar diſpoſitions of a certain number of individuals, to ſet aſide thoſe individuals, is to pluck up the evil by the roots.

But I perceive, that, in order to make the reader ſenſible of the advantages that may accrue to the people of England, from their right of election, there is another of their rights, of which it is abſolutely neceſſary that I ſhould firſt give an account.

CHAP.

CHAPTER XII.

The Subject continued.—Liberty of the Preſs.

AS the evils that may be complained of in a State do not always ariſe merely from the defect of the laws, but alſo from the non-execution of them, and this non-execution of ſuch a kind, that it is often impoſſible to ſubject it to any expreſs puniſhment, or even to aſcertain it by any previous definition, Men, in ſeveral States, have been led to ſeek for an expedient that might ſupply the unavoidable deficiency of legiſlative proviſions, and begin to operate, as it were, from the point at which the latter begin to fail. I mean here to ſpeak of the Cenſorial power; a power which may produce excellent effects, but the exerciſe of which (contrary to that of the legiſlative power) muſt be left to the People themſelves.

As the propoſed end of Legiſlation is not, according to what has been above obſerved, to have the particular intentions of individuals, upon every caſe, known and complied with, but ſolely to have what is moſt conducive to the public good on the occaſions that ariſe, found out, and eſtabliſhed, it is not an eſſential

requiſite in legiſlative operations, that every individual ſhould be called upon to deliver his opinion; and ſince this expedient, which at firſt ſight appears ſo natural, of ſeeking out by the advice of all that which concerns all, is found liable, when carried into practice, to the greateſt inconveniences, we muſt not heſitate to lay it aſide entirely. But as it is the opinion of individuals alone, which conſtitutes the check of a cenſorial power, this power cannot poſſibly produce its intended effect, any farther than this public opinion is made known and declared: the ſentiments of the people are the only thing in queſtion here: therefore it is neceſſary, that the People ſhould ſpeak for themſelves, and manifeſt thoſe ſentiments. A particular Court of Cenſure therefore eſſentially fruſtrates its intended purpoſe; it is attended, beſides, with very great inconveniences.

As the uſe of ſuch a Court is to determine upon thoſe caſes, only, which lie out of the reach of the laws, it cannot be tied down to any preciſe regulations. As a farther conſequence of the nature of its functions, it cannot even be ſubjected to any conſtitutional check; and it continually preſents to the eye the view of a power entirely arbitrary, and which, in its different exertions, may affect

in the moſt cruel manner, the peace and happineſs of individuals. It is attended, beſides, with this very pernicious conſequence, that, by dictating to the people their judgments of Men or meaſures, it takes from them that freedom of thinking, which is the nobleſt privilege, as well as the firmeſt ſupport of Liberty (*a*).

We may therefore look upon it as a farther proof of the ſoundneſs of the principles

(*a*) M. de Monteſquieu, and M. Rouſſeau, and indeed all the Writers I have met with on this ſubject, beſtow vaſt encomiums on the Cenſorial Tribunal that had been inſtituted at Rome;—they have not been aware that this power of Cenſure, lodged in the hands of peculiar Magiſtrates, with other diſcretionary powers annexed to it, was no other than a piece of State-craft, like thoſe deſcribed in the preceding Chapters, and had been contrived by the Senate as an additional means of ſecuring its authority.—Sir Thomas More has alſo adopted ſimilar opinions on the ſubject; and he is ſo far from allowing the people to canvaſs the actions of their Rulers, that in his Syſtem of Polity, which he calls *An Account of Utopia* (the happy Region,—εὖ and τόπος) he makes it death for individuals to talk about the conduct of Government.

I feel a kind of pleaſure, I muſt confeſs, to obſerve, on this occaſion, that though I have been called by ſome an advocate for Power, I have carried my ideas of Liberty farther than many Writers who have mentioned that word with much enthuſiaſm.

on which the Engliſh conſtitution is founded, that it has allotted to the People themſelves the province of openly canvaſſing and arraigning the conduct of thoſe who are inveſted with any branch of public authority; and that it has thus delivered into the hands of the People at large, the exerciſe of the Cenſorial power. Every Subject in England has not only a right to preſent petitions to the King, or the Houſes of Parliament, but he has a right alſo to lay his complaints and obſervations before the Public, by means of an open preſs. A formidable right this, to thoſe who rule mankind; and which, continually diſpelling the cloud of majeſty by which they are ſurrounded, brings them to a level with the reſt of the people, and ſtrikes at the very being of their authority.

And indeed this privilege is that which has been obtained by the Engliſh Nation, with the greateſt difficulty, and lateſt in point of time, at the expence of the Executive power. Freedom was in every other reſpect already eſtabliſhed, when the Engliſh were ſtill, with regard to the public expreſſion of their ſentiments, under reſtraints that may be called deſpotic. Hiſtory abounds with inſtances of the ſeverity of the Court of Star-Chamber,

againſt thoſe who preſumed to write on political ſubjects. It had fixed the number of printers and printing-preſſes, and appointed a *Licenſer*, without whoſe approbation no book could be publiſhed. Beſides, as this Tribunal decided matters by its own ſingle authority, without the intervention of a Jury, it was always ready to find thoſe perſons guilty, whom the Court was pleaſed to look upon as ſuch; nor was it indeed without ground that Chief Juſtice Coke, whoſe notions of liberty were ſomewhat tainted with the prejudices of the times in which he lived, concluded the elogiums he has beſtowed on this Court, with ſaying, that "the right inſtitution and orders "thereof being obſerved, it doth keep all "England in quiet."

After the Court of Star-Chamber had been aboliſhed, the Long Parliament, whoſe conduct and aſſumed power were little better qualified to bear a ſcrutiny, revived the regulations againſt the freedom of the preſs. Charles the Second, and after him James the Second, procured farther renewals of them. Theſe latter acts having expired in the year 1692, were, at this æra, although poſterior to the Revolution, continued for two years longer;

ſo that it was not till the year 1694, that, in conſequence of the Parliament's refuſal to continue the prohibitions any longer, the freedom of the preſs (a privilege which the Executive power could not, it ſeemed, prevail upon itſelf to yield up to the people), was finally eſtabliſhed.

In what then does this liberty of the preſs preciſely conſiſt? Is it a liberty left to every one to publiſh any thing that comes into his head? to calumniate, to blacken, whomſoever he pleaſes? No; the ſame laws that protect the perſon and the property of the individual, do alſo protect his reputation; and they decree againſt libels, when really ſo, puniſhments of much the ſame kind as are eſtabliſhed in other Countries. But, on the other hand, they do not allow, as in other States, that a Man ſhould be deemed guilty of a crime for merely publiſhing ſomething in print; and they appoint a puniſhment only againſt him who has printed things that are in their nature criminal, and who is declared guilty of ſo doing by twelve of his equals, appointed to determine upon his caſe, with the precautions we have before deſcribed.

The liberty of the preſs, as eſtabliſhed in England, conſiſts therefore, to define it more

preciſely, in this, that neither the Courts of Juſtice, nor any other Judges whatever, are authoriſed to take any notice of writings intended for the preſs, but are confined to thoſe which are actually printed, and muſt, in theſe caſes, proceed by the Trial by Jury.

It is even this latter circumſtance which more particularly conſtitutes the freedom of the preſs. If the Magiſtrates, though confined in their proceedings to caſes of criminal publications, were to be the ſole Judges of the criminal nature of the things publiſhed, it might eaſily happen that, with regard to a point, which, like this, ſo highly excites the jealouſy of the governing Powers, they would exert themſelves with ſo much ſpirit and perſeverance, that they might, at length, ſucceed in completely ſtriking off all the heads of the hydra.

But whether the authority of the Judges be exerted at the motion of a private individual, or whether it be at the inſtance of the Government itſelf, their ſole office is to declare the puniſhment eſtabliſhed by the law:—it is to the Jury alone that it belongs to determine on the matter of law, as well as on the matter of fact; that is, to determine, not only whether the writing which is the ſubject of the

charge has really been compoſed by the Man charged with having done it, and whether it be really meant of the perſon named in the indictment,—but alſo, whether its contents are criminal.

And though the law in England does not allow a Man, proſecuted for having publiſhed a libel, to offer to ſupport by evidence the truth of the facts contained in it, (a mode of proceeding which would be attended with very miſchievous conſequences, and is every where prohibited), yet *(a)* as the indictment is to expreſs that the facts are *falſe*, *malicious*, &c. and the Jury, at the ſame time, are ſole maſters of their verdict, that is, may ground it upon what conſiderations they pleaſe, it is very probable that they would acquit the accuſed party, if the facts aſſerted in the writing before them, were matter of undoubted truth, and of a general evil tendency. They, at leaſt, would certainly have it in their power.

And this would ſtill more likely be the caſe if the conduct of the Government itſelf was arraigned; becauſe, beſides this conviction

(a) In actions for damages between individuals, the caſe, if I miſtake not, is different, and the defendant is allowed to produce evidence of the facts aſſerted by him.

which we ſuppoſe in the Jury, of the certainty of the facts, they would alſo be influenced by their ſenſe of a principle generally admitted in England, and which, in a late celebrated cauſe, has been ſtrongly inſiſted upon, viz. That, "though to ſpeak ill of individuals was deſerving of reprehenſion, "yet the public acts of Government ought "to lie open to public examination, and that "it was a ſervice done to the State, to canvaſs "them freely *(a)*."

And indeed this extreme ſecurity with which every man in England is enabled to communicate his ſentiments to the Public, and the general concern which matters relative to the Government are always ſure to create, has wonderfully multiplied all kinds of public papers. Beſides thoſe which, being publiſhed at the end of every year, month, or week, preſent to the reader a recapitulation of every thing intereſting that may have been done or ſaid during their reſpective periods, there are ſeveral others, which making their appearance every day, or every other day, communicate to the public the ſeveral meaſures taken by

(a) See Serjeant Glynn's Speech for Woodfall in the proſecution againſt the latter, by the Attorney-General, for publiſhing Junius's letter to the King.

the Government, as well as the different cauſes of any importance, whether civil or criminal, that occur in the Courts of Juſtice, and ſketches from the ſpeeches either of the Advocates or the Judges, concerned in the management and deciſion of them. During the time the Parliament continues ſitting, the votes or reſolutions of the Houſe of Commons, are daily publiſhed by authority; and the moſt intereſting ſpeeches in both Houſes, are taken down in ſhort-hand, and communicated to the Public, in print.

Laſtly, the private anecdotes in the Metropolis, and the Country, concur alſo towards filling the collection; and as the ſeveral public papers circulate, or are tranſcribed into others, in the different Country Towns, and even find their way into the villages, where every Man, down to the labourer, peruſes them with a ſort of eagerneſs, every individual thus becomes acquainted with the State of the Nation, from one end to the other; and by theſe means the general intercourſe is ſuch, that the three Kingdoms ſeem as if they were one ſingle Town.

And it is this public notoriety of all things, that conſtitutes the ſupplemental power, or check, which, we have above ſaid, is ſo uſeful to remedy the unavoidable inſufficiency

of the laws, and keep within their reſpective bounds all thoſe perſons who enjoy any ſhare of public authority.

As they are thereby made ſenſible that all their actions are expoſed to public view, they dare not venture upon thoſe acts of partiality, thoſe ſecret connivances at the iniquities of particular perſons, or thoſe vexatious practices, which the Man in office is but too apt to be guilty of, when, exerciſing his office at a diſtance from the public eye, and as it were in a corner, he is ſatisfied that provided he be cautious, he may diſpenſe with being juſt. Whatever may be the kind of abuſe in which perſons in power may, in ſuch a ſtate of things, be tempted to indulge themſelves, they are convinced that their irregularities will be immediately divulged. The Juryman, for example, knows that his verdict, the Judge, that his direction to the Jury, will preſently be laid before the Public: and there is no Man in office, but who thus finds himſelf compelled, in almoſt every inſtance, to chooſe between his duty, and the ſurrender of all his former reputation.

It will, I am aware, be thought that I ſpeak in too high terms, of the effects produced by the public news-papers. I indeed confeſs

that all the pieces contained in them are not patterns of good reaſoning, or of the trueſt Attic wit; but, on the other hand, it never happens that a ſubject in which the laws, or in general the public welfare, are really concerned, fails to calls forth ſome able writer, who, under one form or other, communicates to the public his obſervations and complaints. I ſhall add here, that, though an upright Man, who may labour for a while under a ſtrong popular prejudice, may, ſupported by the conſciouſneſs of his innocence, endure with patience the ſevereſt imputations, a guilty Man, hearing nothing in the reproaches of the public but what he knows to be true, and already upbraids himſelf with, is very far from enjoying any ſuch comfort; and that, when a man's own conſcience takes part againſt him, the moſt deſpicable weapon is ſufficient to wound him to the quick *(a)*.

(*a*) I ſhall take this occaſion to obſerve, that the liberty of the preſs is ſo far from being injurious to the reputation of individuals, (as ſome perſons have complained) that it is, on the contrary, its ſureſt guard. When there exiſts no means of communication with the Public, every one is expoſed, without defence, to the ſecret ſhafts of malignity and envy. The Man in office loſes his reputation, the Merchant his credit, the private individual his character, without ſo much as knowing, either who are his enemies, or which way

Even thoſe perſons, whoſe greatneſs ſeems moſt to ſet them above the reach of public cenſure, are not thoſe who leaſt feel its effects. They have need of the ſuffrages of that vulgar whom they affect to deſpiſe, and who are, after all, the diſpenſers of that glory, which is the real object of their ambitious cares. Though all have not ſo much ſincerity as Alexander, they have equal reaſon to exclaim, *O People! what toils do we not undergo, in order to gain your applauſe!*

I confeſs, that in a State where the People dare not ſpeak their ſentiments, but with a view to pleaſe the ears of their rulers, it is poſſible that either the Prince, or thoſe to whom he has truſted his authority, may ſometimes miſtake the nature of the public ſentiments, or that, for want of that affection of which they are refuſed all public marks, they may reſt contented with inſpiring terror, and make themſelves amends in beholding the over-awed multitude ſmother their complaints.

they carry on their attacks. But when there exiſts a free preſs, an innocent Man immediately brings the matter into open day, and cruſhes his adverſaries, at once, by a challenge given to all, to lay before the public the grounds of their ſeveral imputations.

But when the laws give a full ſcope to the people for the expreſſion of their ſentiments, thoſe who govern cannot conceal from themſelves the diſagreeable truths which reſound from all ſides. They are obliged to put up even with ridicule; and the coarſeſt jeſts are not always thoſe which give them the leaſt uneaſineſs. Like the lion in the fable, they muſt bear the blows of thoſe enemies whom they deſpiſe the moſt; and they are, at length, ſtopped ſhort in their career, and compelled to give up thoſe unjuſt purſuits which they find to draw upon them, inſtead of that admiration which is the propoſed end and reward of their labours, nothing but mortification and diſguſt.

In ſhort, whoever conſiders what it is that conſtitutes the moving principles of what we call great affairs, and the invincible ſenbility of Man to the opinion of his fellow-creatures, will not hefitate to affirm that, if it were poſſible for the liberty of the preſs to exiſt in a deſpotic government, and (what is not leſs difficult) for it to exiſt without changing the conſtitution, this liberty of the preſs would alone form a counterpoiſe to the power of the Prince. If, for example, in an empire of the Eaſt, a ſanctuary could be found, which, ren-

dered reſpectable by the ancient religion of the people, might enſure ſafety to thoſe who ſhould bring thither their obſervations of any kind, and that from thence printed papers ſhould iſſue, which, under a certain ſeal, might be equally reſpected, and which, in their daily appearance, ſhould examine and freely diſcuſs the conduct of the Cadis, the Baſhaws, the Vizir, the Divan, and the Sultan himſelf,—that would introduce immediately ſome degree of liberty.

CHAP. XIII.

The Subject continued.

ANOTHER effect, and a very conſiderable one, of the liberty of the preſs, is, that it enables the People effectually to exert thoſe means which the Conſtitution has beſtowed on them, of influencing the motions of the Government.

It has been obſerved before, how it came to be a matter of impoſſibility for any large number of Men, when obliged to act in a body, and upon the ſpot, to take any well-weighed reſolution. But this inconvenience, which is the inevitable conſequence of their

ſituation, does in no wiſe argue a perſonal inferiority in them, with reſpect to the few who, from ſome accidental advantages, are enabled to influence their determinations. It is not Fortune, it is Nature, that has made the eſſential differences between Men: and whatever appellation a ſmall number of perſons, who ſpeak without ſufficient reflection, may affix to the general body of their fellow-creatures, the whole difference between the Stateſman, and many a Man from among what they call the dregs of the People, often lies in the rough outſide of the latter; a diſguiſe which may fall off on the firſt occaſion; and more than once has it happened, that from the middle of a multitude in appearance contemptible, there have been ſeen to riſe at once Viriatuſes, or Spartacuſes.

Time, and a more favourable ſituation (to repeat it once more), are therefore the only things wanting to the People; and the freedom of the preſs affords the remedy to theſe diſadvantages. Through its aſſiſtance every individual may, at his leiſure and in retirement, inform himſelf of every thing that relates to the queſtions on which he is to take a reſolution. Through its aſſiſtance, a whole Nation, as it were, holds a Council, and deliberates; ſlowly indeed (for a Nation cannot be informed like

an aſſembly of Judges), but after a regular manner, and with certainty. Through its aſſiſtance, all matters of fact are, at length, made clear; and, by means of the conflict of the different anſwers and replies, nothing at laſt remains, but the ſound part of the arguments *(a)*.

(*a*) This right of publicly diſcuſſing political ſubjects, is alone a great advantage to a People who enjoy it; and if the Citizens of Geneva, for inſtance, have preſerved their liberty better than the people have been able to do in the other Commonwealths of Switzerland, it is, I think, owing to the extenſive right they poſſeſs, of making public remonſtrances to their Magiſtrates. To theſe remonſtrances the Magiſtrates, for inſtance the Council of *Twenty-five*, to which they are uſually made, are obliged to give an anſwer. If this anſwer does not ſatisfy the remonſtrating Citizens, they take time, perhaps two or three weeks, to make a reply to it, which muſt alſo be anſwered; and the number of Citizens who go up with each new remonſtrance increaſes, according as they are thought to have reaſon on their ſide. Thus, the remonſtrances, which were made ſome years ago, on account of the ſentence againſt the celebrated M. Rouſſeau, and were delivered at firſt by only forty Citizens, were afterwards often accompanied by about nine hundred.——This circumſtance, together with the ceremony with which thoſe remonſtrances (or *Repreſentations*, as they more commonly call them) are delivered, has rendered them a great check on the conduct of the Magiſtrates: they even have been ſtill more uſeful to the Citizens of Geneva, as a preventative than as a remedy; and nothing is more likely to deter the Magiſtrates from taking a ſtep of any kind than the thought that it will give riſe to a *Repreſentation*.

Hence, though good Men may not think themſelves obliged to concur implicitly in the tumultuary reſolutions of a People whom their Orators take pains to agitate, yet, on the other hand, when this ſame People, left to itſelf, perſeveres in opinions which have for a long time been diſcuſſed in public writings, and from which (it is eſſential to add) all errors concerning facts have been removed, ſuch perſeverance appears to me a very reſpectable deciſion; and then it is, though only then, that we may ſafely ſay,—"the voice of the People "is the voice of God."

How, therefore, can the people of England *act*, when, having formed opinions which may really be called their own, they think they have juſt cauſe to complain againſt the Adminiſtration? It is, as has been ſaid above, by means of the right they have of electing their Repreſentatives; and the ſame method of general intercourſe that has informed them with regard to the objects of their complaints, will likewiſe enable them to apply the remedy to them.

Through this means they are acquainted with the nature of the ſubjects that have been deliberated upon in the Aſſembly of their Re-

preſentatives;—they are informed by whom the different motions were made,—by whom they were ſupported; and the manner in which the ſuffrages are delivered, is ſuch, that they always can know the names of thoſe who would vote conſtantly for the advancement of pernicious meaſures.

And the People not only know the particular diſpoſitions of every member of the Houſe of Commons; but the general notoriety of all things gives them alſo a knowledge of the political ſentiments of the greateſt part of thoſe whom their ſituation in life renders fit to fill a place in that Houſe. And availing themſelves of the ſeveral vacancies that happen, and ſtill more of the opportunity of a general election, they purify either ſucceſſively, or at once, the Legiſlative Aſſembly; and thus, without any commotion or danger to the State, they effect a material reformation in the views of the Government.

I am aware that ſome perſons will doubt of theſe patriotic and ſyſtematic views, which I attribute to the People of England, and will object to me the diſorders that ſometimes happen at Elections. But this reproach,

which, by the way, comes with but little propriety from Writers who would have the People tranſact every thing in their own perſons, this reproach, I ſay, though true to a certain degree, is not however ſo much ſo as it is thought by certain perſons, who have taken only a ſuperficial ſurvey of the ſtate of things.

Without doubt, in a Conſtitution in which all important cauſes of uneaſineſs are ſo effectually prevented, it is impoſſible but that the People will have long intervals of inattention. Being then called upon, on a ſudden, from this ſtate of inactivity, to elect Repreſentatives, they have not examined, beforehand, the merits of thoſe who aſk them their votes; and the latter have not had, amidſt the general tranquility, any opportunity to make themſelves known to them.

The Elector, perſuaded, at the ſame time, that the perſon whom he will elect, will be equally intereſted with himſelf in the ſupport of public liberty, does not enter into laborious diſquiſitions, and from which he ſees he may exempt himſelf. Obliged, however, to give the preference to ſomebody, he forms his choice on motives which would not be excuſable, if it were not that ſome motives are

neceſſary to make a choice, and that, at this inſtant, he is not influenced by any other: and indeed it muſt be confeſſed, that, in the ordinary courſe of things, and with Electors of a certain rank in life, that Candidate who gives the beſt entertainment, has a great chance to get the better of his competitors.

But if the meaſures of Government, and the reception of thoſe meaſures in Parliament, by means of a too complying Houſe of Commons, ſhould ever be ſuch as to ſpread a ſerious alarm among the People, the ſame cauſes which have concurred to eſtabliſh public liberty, would, no doubt, operate again, and likewiſe concur in its ſupport. A general combination would then be formed, both of thoſe Members of Parliament who have remained true to the public cauſe, and of perſons of every order among the People. Public meetings, in ſuch circumſtances, would be appointed, general ſubſcriptions would be entered into, to ſupport the expences, whatever they might be, of ſuch a neceſſary oppoſition; and all private and unworthy purpoſes being ſuppreſſed by the ſenſe of the National danger, the choice of the electors would then be wholly determined by the conſider-

ation of the public ſpirit of the Candidates, and the tokens given by them of ſuch ſpirit.

Thus were thoſe Parliaments formed, which ſuppreſſed arbitrary taxes and impriſonments. Thus was it, that, under Charles the Second, the People, when recovered from that enthuſiaſm of affection with which they received a King ſo long perſecuted, at laſt returned to him no Parliaments but ſuch as were compoſed of a majority of Men attached to public liberty. Thus it was, that, perſevering in a conduct which the circumſtances of the times rendered neceſſary, the People baffled the arts of the Government; and Charles diſſolved three ſucceſſive Parliaments, without any other effect but that of having thoſe ſame Men rechoſen, and ſet again in oppoſition to him, of whom he hoped he had rid himſelf for ever.

Nor was James the Second happier in his attempts than Charles had been. This Prince ſoon experienced that his Parliament was actuated by the ſame ſpirit as thoſe which had oppoſed the deſigns of his late brother; and having ſuffered himſelf to be led into meaſures of violence, inſtead of being better taught by the diſcovery he made of the ſentiments of the People, his reign was terminated

by that cataſtrophe with which every one is acquainted.

Indeed, if we combine the right enjoyed by the People of England, of electing their Repreſentatives, with the whole of the Engliſh Government, we ſhall become continually more and more ſenſible of the excellent effects that may reſult from that right. All Men in the State are, as has been before obſerved, really intereſted in the ſupport of public liberty;—nothing but temporary motives, and ſuch as are peculiar to themſelves, can poſſibly induce the Members of any Houſe of Commons to connive at meaſures deſtructive of this liberty: the People, therefore, under ſuch circumſtances, need only change theſe Members, in order effectually to reform the conduct of that Houſe: and it may ſafely be pronounced beforehand, that a Houſe of Commons, compoſed of a new ſet of perſons, will, from this circumſtance alone, be in the intereſts of the People.

Hence, though the complaints of the People do not always meet with a ſpeedy and immediate redreſs (a celerity which would be the ſymptom of a fatal unſteadineſs in the Conſtitution, and would ſooner or later bring on its ruin) yet, when we attentively conſider

the nature and the reſources of this Conſtitution, we ſhall not think it too bold an aſſertion to ſay, that it is impoſſible but that complaints in which the People perſevere, that is, to repeat it once more, well-grounded complaints, will ſooner or later be redreſſed.

CHAP. XIV.

Right of Reſiſtance.

BUT all theſe privileges of the People, conſidered in themſelves, are but feeble defences againſt the real ſtrength of thoſe who govern. All thoſe proviſions, all thoſe reciprocal Rights, neceſſarily ſuppoſe that things remain in their legal and ſettled courſe: what would then be the reſource of the People, if ever the Prince, ſuddenly freeing himſelf from all reſtraint, and throwing himſelf as it were out of the Conſtitution, ſhould no longer reſpect either the perſon or the property of the ſubject, and either ſhould make no account of his conventions with his Parliament, or attempt to force it implicitly to ſubmit to his will?—It would be reſiſtance.

Without entering here into the diſcuſſion of a doctrine which would lead us to equire into the firſt principles of civil Government, conſequently engage us in a long diſquiſition, and with regard to which, beſides, perſons free from prejudices agree pretty much in their opinions, I ſhall only obſerve here (and it will be ſufficient for my purpoſe), that the queſtion has been decided in favour of this doctrine by the Laws of England, and that reſiſtance is looked upon by them as the ultimate and lawful reſource againſt the violences of Power.

It was reſiſtance that gave birth to the Great Charter, that laſting foundation of Engliſh Liberty; and the exceſſes of a Power eſtabliſhed by force, were alſo reſtrained by force *(a)*.

(*a*) Lord Lyttelton ſays extremely well in his Perſian Letters, "If the privileges of the People of "England be conceſſions from the Crown, is not the "power of the Crown itſelf, a conceſſion from the "People?" It might be ſaid with equal truth, and ſomewhat more in point to the ſubject of this Chapter,—If the privileges of the People were an encroachment on the power of Kings, the power itſelf of Kings was, at firſt, an encroachment (no matter whether effected by ſurprize) on the natural liberty of the People.

It has been by the ſame means that, at different times, the People have procured the confirmation of the ſame Charter. Laſtly, it has alſo been the reſiſtance to a King who made no account of his own engagements, that has, in the iſſue, placed on the Throne the family which is now in poſſeſſion of it.

This is not all; this reſource which, till then, had only been an act of force, oppoſed to other acts of force, was, at that æra, expreſly recognized by the Law itſelf. The Lords and Commons, ſolemnly aſſembled, declared, that "King James the Second, having "endeavoured to ſubvert the Conſtitution of "the Kingdom, by breaking the original "contract between King and People, and hav-"ing violated the fundamental laws, and "withdrawn himſelf, had abdicated the Go-"vernment; and that the Throne was thereby "vacant (*a*)".

And leſt thoſe principles to which the Revolution thus gave a ſanction, ſhould, in proceſs of time, become mere *arcana* of State, excluſively appropriated, and only known, to a certain claſs of Subjects, the ſame Act, we have juſt mentioned, expreſly inſured to in-

(*a*) The Bill of Rights has ſince given a new ſanction to all theſe principles.

dividuals the right of publicly preferring complaints againſt the abuſes of Government, and moreover, of being provided with arms for their own defence. Judge Blackſtone expreſſes himſelf in the following terms, in his Commentaries on the Laws of England. (B. I. ch. i. p. 140.)

" And laſtly, to vindicate thoſe rights, " when actually violated or attacked, the " ſubjects of England are entitled, in the " firſt place, to the regular adminiſtration " and free courſe of juſtice in the Courts of " law; next, to the right of petitioning the " King and Parliament for redreſs of grie- " vances; and, laſtly, to the right of hav- " ing and uſing arms for ſelf-preſervation and " defence."

Laſtly, this right of oppoſing violence, in whatever ſhape, and from whatever quarter, it may come, is ſo generally acknowledged, that the Courts of law have ſometimes grounded their judgments upon it. I ſhall relate on this head a fact which is ſomewhat remarkable.

A Conſtable, being out of his precinct, arreſted a woman whoſe name was *Anne Dekins*; one *Tooly* took her part, and in the heat of the fray, killed the aſſiſtant of the Conſtable.

Being proſecuted for murder, he alledged, in his defence, that the illegality of the impriſonment was a ſufficient provocation to make the homicide *excuſable*, and intitle him to the benefit of his Clergy. The Jury having ſettled the matter of fact, left the *criminality* of it to be decided by the Judge, by returning a *ſpecial verdict*. The cauſe was adjourned to the King's Bench, and thence again to Serjeants Inn, for the opinion of the twelve judges. Here follows the opinion delivered by Chief Juſtice Holt, in giving judgment.

" If one be impriſoned upon an unlawful " authority, it is a ſufficient provocation to " all people, out of compaſſion, much more " ſo when it is done under colour of juſtice; " and when the liberty of the ſubject is in- " vaded, it is a provocation to all the ſubjects " of England. A Man ought to be con- " cerned for *Magna Charta* and the laws; " and if any one againſt law impriſon a Man, " he is an offender againſt Magna Charta." After ſome debate, occaſioned chiefly by Tooly's appearing not to have known that the Conſtable was out of his precinct, ſeven of the Judges were of opinion, that the priſoner

was guilty of Manſlaughter, and he was admitted to the benefit of Clergy (*a*).

But it is with reſpect to this right of an ultimate reſiſtance, that the advantage of a free preſs appears in a moſt conſpicuous light. As the moſt important rights of the People, without the proſpect of a reſiſtance which overawes thoſe who ſhould attempt to violate them, are mere ſhadows,—ſo this right of *reſiſting*, itſelf, is but vain, when there exiſts no means of effecting a general union between the different parts of the People.

Private individuals, unknown to each other, are forced to bear in ſilence injuries in which they do not ſee other people take a concern. Left to their own individual ſtrength, they tremble before the formidable and ever-ready power of thoſe who govern; and as the latter well know, nay, are apt to over-rate the advantages of their own ſituation, they think they may venture upon any thing.

But when they ſee that all their actions are expoſed to public view,—that in conſequence of the celerity with which all things

(*a*) See Reports of Caſes argued, debated, and adjudged in *Banco Reginæ*, in the time of the late Queen Anne.

are communicated, the whole Nation forms, as it were, one continued *irritable* body, no part of which can be touched without exciting an univerſal *tremor*; they become ſenſible that the cauſe of each individual is really the cauſe of all, and that to attack the loweſt among the People, is to attack the whole People.

Here alſo we muſt remark the error of thoſe who, as they make the liberty of the people to conſiſt in their power, ſo make their power conſiſt in their action.

When the People are often called to act in their own perſons, it is impoſſible for them to acquire any exact knowledge of the ſtate of things. The event of one day effaces the notions which they had begun to adopt on the preceding day; and amidſt the continual change of things, no ſettled principle, and above all, no plans of union, have time to be eſtabliſhed among them.—You wiſh to have the People love and defend their laws and liberty; leave them, therefore, the neceſſary time to know what laws and liberty are, and to agree in their opinion concerning them;—you wiſh an union, a *coalition*, which cannot be obtained but by a ſlow and peaceable *proceſs*, forbear therefore continually to ſhake the veſſel.

Nay farther, it is a contradiction, that the People ſhould *act*, and at the ſame time retain any real power. Have they, for inſtance, been forced by the weight of public oppreſſions to throw off the reſtraints of the law, from which they no longer received protection, they preſently find themſelves at once become ſubject to the command of a few Leaders, who are the more abſolute in proportion as the nature of their power is leſs clearly aſcertained: nay, perhaps they muſt even ſubmit to the toils of war, and to military diſcipline.

If it be in the common and legal courſe of things that the People are called to move, each individual is obliged, for the ſucceſs of the meaſures in which he is then made to take a concern, to join himſelf to ſome party; nor can this party be without a head. The Citizens thus grow divided among themſelves, and contract the pernicious habit of ſubmitting to Leaders. They are, at length, no more than the clients of a certain number of Patrons; and the latter ſoon becoming able to command the arms of the Citizens as they at firſt governed their votes, make little account of a People, with one part of which they know how to curb the other.

But when the moving ſprings of Government are placed entirely out of the body of the People, their action is thereby diſengaged from all that could render it complicated, or hide it from the eye. As the People thenceforward conſider things ſpeculatively, and are, if I may be allowed the expreſſion, only ſpectators of the game, they acquire juſt notions of things; and as theſe notions, amidſt the general quiet, get ground and ſpread themſelves far and wide, they at length entertain on the ſubject of their liberty, but one opinion.

Forming thus, as it were, one body, the People, at every inſtant, has it in its power to ſtrike the deciſive blow which is to level every thing. Like thoſe mechanical powers, the greateſt efficiency of which exiſts at the inſtant which precedes their entering into action, it has an immenſe force, juſt becauſe it does not yet exert any; and in this ſtate of ſtillneſs, but of attention, conſiſts its true *momentum*.

With regard to thoſe who (whether from perſonal privileges, or by virtue of a commiſſion from the People) are intruſted with the active part of Government, as they, in the mean while, ſee themſelves expoſed to

public view, and obſerved as from a diſtance by Men free from the ſpirit of party, and who place in them but a conditional truſt, they are afraid of exciting a commotion which, though it would not be the deſtruction of all power, yet would ſurely and immediately be the deſtruction of their own. And if we might ſuppoſe that, through an extraordinary conjunction of circumſtances, they ſhould reſolve among themſelves upon the ſacrifice of the laws on which public liberty is founded, they would no ſooner lift up their eyes towards that extenſive Aſſembly which views them with a watchful attention, than they would find their public virtue return upon them, and would make haſte to reſume that plan of conduct out of the limits of which they can expect nothing but ruin and perdition.

In ſhort, as the body of the People cannot act without either ſubjecting themſelves to ſome Power, or effecting a general deſtruction, the only ſhare they can have in a Government with advantage to themſelves, is not to interfere, but to influence;—to be able to act, and not to act.

The power of the People is not when they ſtrike, but when they keep in awe: it is

when they can overthrow every thing, that they never need to move; and Manlius included all in four words, when he ſaid to the People of Rome, *Oſtendite bellum, pacem habebitis.*

CHAP. XIV.

Proofs, drawn from Facts, of the Truth of the Principles laid down in the preſent Work.—
1. *The peculiar Manner in which Revolutions have always been concluded in England.*

IT may not be ſufficient to have proved by arguments the advantages of the Engliſh Conſtitution: it will perhaps be aſked, whether the effects correſpond to the theory? To this queſtion (which I confeſs is extremely proper) my anſwer is ready; it is the ſame which was once made, I believe, by a Lacedemonian, *Come and ſee.*

If we peruſe the Engliſh Hiſtory, we ſhall be particularly ſtruck with one circumſtance to be obſerved in it, and which diſtinguiſhes moſt advantageouſly the Engliſh Government from all other free governments; I mean the

manner in which Revolutions and public commotions have always been terminated in England.

If we read with ſome attention the Hiſtory of other free States, we ſhall ſee that the public diſſenſions that have taken place in them, have conſtantly been terminated by ſettlements, in which the intereſts only of *a few* were really provided for; while the grievances of *the many* were hardly, if at all, attended to. In England the very reverſe has happened, and we find Revolutions always to have been terminated by extenſive and accurate proviſions for ſecuring the general liberty.

The Hiſtory of the ancient Grecian Commonwealths, but above all of the Roman Republic, of which more complete accounts have been left us, afford ſtriking proof of the former part of this obſervation.

What was, for inſtance, the conſequence of that great Revolution by which the Kings were driven from Rome, and in which the Senate and Patricians acted as the adviſers and leaders of the People? The conſequence was, we find in Dionyſius of Halicarnaſſus, and Livy, that the Senators immediately aſſumed all thoſe powers, lately ſo much complained of by themſelves, which the Kings

had exerciſed. The execution of their future decrees was intruſted to two Magiſtrates taken from their own body, and entirely dependant on them, whom they called *Conſuls*, and who were made to bear about them all the enſigns of power which had formerly attended the Kings. Only, care was taken that the axes and *faſces*, the ſymbols of the power of life and death over the Citizens, which the Senate then claimed to itſelf, ſhould not be carried before both Conſuls at once, but only before one at a time, for fear, ſays Livy, of doubling the terror of the People (*a*).

Nor was this all: the Senators drew over to their party thoſe Men who had the moſt intereſt at that time among the People, and admitted them as Members into their own Body (*b*); which indeed was a precaution they could not prudently avoid taking. But the intereſts of the great Men in the Republic being thus ſettled, the Revolution ended. The new Senators, as well as the old, took care not to leſſen, by making proviſions for the

(*a*) "Omnia jura (*Regum*) omnia inſignia, primi Conſules tenuere; id modò cautum eſt ne ſi ambo faſces haberent, duplicatus terror videretur." *Tit. Liv.* lib. ii. § 1.

(*b*) Theſe new Senators were called *conſcripti*: hence the name of *Patres Conſcripti*, afterwards indiſcriminately given to the whole Senate.—*Tit. Liv.* ibid.

liberty of the People, a power which was now become their own. Nay, they preſently ſtretched this power beyond its former tone; and the puniſhments which the Conſul inflicted in a military manner on a number of thoſe who ſtill adhered to the former mode of Government, and even upon his own children, taught the People what they had to expect for the future, if they preſumed to oppoſe the power of thoſe whom they had thus unwarily made their Maſters.

Among the oppreſſive laws, or uſages, which the Senate, after the expulſion of the Kings, had permitted to continue, thoſe which were moſt complained of by the People, were thoſe by which the Citizens who could not pay their debts with the intereſt, (which at Rome was enormous) at the appointed time, became ſlaves to their Creditors, and were delivered over to them bound with cords: hence the word *Nexi*, by which that kind of Slaves were denominated. The cruelties exerciſed by Creditors on thoſe unfortunate Men, whom the private calamities cauſed by the frequent wars in which Rome was engaged, rendered very numerous, at laſt rouſed the body of the People: they abandoned both the City, and their inhuman fellow-citizens, and retreated to the other ſide of the River *Anio*.

But this ſecond Revolution, like the former, only procured the advancement of particular perſons. A new office was created, called the Tribuneſhip. Thoſe whom the People had placed at their head when they left the City, were raiſed to it. Their duty, it was agreed, was for the future to protect the Citizens; and they were inveſted with a certain number of prerogatives for that purpoſe. This Inſtitution, it muſt however be confeſſed, would have, in the iſſue, proved very beneficial to the People, at leaſt for a long courſe of time, if certain precautions had been taken with reſpect to it, which would have much leſſened the future perſonal importance of the new Tribunes *(a)*: but theſe precautions the latter did not think proper to ſuggeſt; and in regard to thoſe abuſes themſelves which had at firſt given riſe to the complaints of the People, no farther mention was made of them *(b)*.

As the Senate and Patricians, in the early ages of the Commonwealth, kept cloſely united together, the Tribunes, for all their perſonal

(*a*) Their number ought to have been much greater; and they never ought to have accepted the power left to each of them, of ſtopping by his ſingle oppoſition the proceedings of all the reſt.

(*b*) A number of ſeditions were afterwards raiſed upon the ſame account.

privileges, were not able, however, during the firſt times after their creation, to gain an admittance either to the Conſulſhip, or into the Senate, and thereby to ſeparate their condition any farther from that of the People. This ſituation of their's, in which it was to be wiſhed they might always have been kept, produced at firſt excellent effects, and cauſed their conduct to anſwer in a great meaſure the expectations of the People. The Tribunes complained loudly of the exorbitancy of the powers poſſeſſed by the Senate and Conſuls; and here we muſt obſerve, that the power exerciſed by the latter over the lives of the Citizens, had never been yet ſubjected, (which will probably ſurpriſe the Reader) to any known laws, though ſixty years had already elapſed ſince the expulſion of the Kings. The Tribunes therefore inſiſted, that laws ſhould be made in that reſpect, which the Conſuls ſhould thenceforwards be bound to follow; and that they ſhould no longer be left, in the exerciſe of their power over the lives of the Citizens, to their own caprice and wantonneſs *(a)*.

(*a*) "Quod Populus in ſe jus dederit, eo Conſulem "uſurum; non ipſos libidinem ac licentiam ſuam pro "lege habituros."—*Tit. Liv.* lib. iii. § 9.

Equitable as theſe demands were, the Senate and Patricians oppoſed them with great warmth, and either by naming Dictators, or calling in the aſſiſtance of the Prieſts, or by other means, they defeated for nine years together, all the endeavours of the Tribunes. However, as the latter were at that time in earneſt, the Senate was at length obliged to comply; and the *Lex Terentilla* was paſſed, by which it was enacted that a general Code of Laws ſhould be made.

Theſe beginnings ſeemed to promiſe great ſucceſs to the cauſe of the People. But, unfortunately for them, the Senate found means to have it agreed, that the office of Tribune ſhould be ſet aſide during the whole time that the Code ſhould be framing. They moreover obtained, that the ten Men, called Decemvirs, to whom the charge of compoſing that Code was to be given, ſhould be taken from the body of the Patricians. The ſame cauſes, therefore, produced again the ſame effects; and the power of the Senate and Conſul was left in the new Code, or laws of the Twelve Tables, as undefined as before. As to the laws above mentioned, concerning debtors, which never had ceaſed to be bitterly complained of by the People, and with regard to which ſome ſatisfaction ought in com-

mon juſtice, to have been given them, they were confirmed, and a new terror added to them from the manner in which they were worded.

The true motive of the Senate, when they thus truſted the framing of the new laws to a new kind of Magiſtrates, called Decemvirs, was that, by ſuſpending the ancient office of Conſul, they might have a pretence for ſuſpending alſo the office of Tribune, and thereby rid themſelves of the People, during the time that the important buſineſs of framing the Code ſhould be carrying on: they even, in order the better to ſecure that point, placed the whole power in the Republic, in the hands of theſe new Magiſtrates. But the Senate and Patricians experienced then, in their turn, the danger of entruſting Men with an uncontrolled authority. As they themſelves had formerly betrayed the truſt which the People had placed in them, ſo did the Decemvirs, on this occaſion, likewiſe deceive them. They retained, by their own private authority, the unlimited power that had been conferred on them, and at laſt exerciſed it on the Patricians as well as the Plebeians. Both parties therefore united againſt them, and the Decemvirs were expelled from the City.

The former dignities of the Republic were reſtored, and with them the office of Tribune. Thoſe from among the People who had been moſt inſtrumental in deſtroying the power of the Decemvirs, were, as it was natural, raiſed to the Tribuneſhip; and they entered upon their offices poſſeſſed of a prodigious degree of popularity. The Senate and the Patricians were, at the ſame time, ſunk extremely low in conſequence of the long tyranny which had juſt expired; and thoſe two circumſtances united, afforded the Tribunes but too eaſy an opportunity of making the preſent Revolution end as the former ones had done, and converting it to the advancement of their own power. They got new perſonal privileges to be added to thoſe which they already poſſeſſed, and moreover procured a law to be enacted, by which it was ordained, that the reſolutions taken by the *Comitia Tributa* (an Aſſembly in which the Tribunes were admitted to propoſe new laws) ſhould be binding upon the whole Commonwealth:—by which they at once raiſed to themſelves an *imperium in imperio*, and acquired, as Livy expreſſes it, a moſt active weapon *(a)*.

(a) Acerrimum telum.

From that time great commotions aroſe in the Republic, which, like all thoſe before them, ended in promoting the power of a *few*.—Propoſals for eaſing the People of their debts, for dividing with ſome equality amongſt the Citizens the lands which were taken from the enemy, and for lowering the rate of the intereſt of money, were frequently made by the Tribunes. And indeed all theſe were excellent regulations to propoſe; but unfortunately for the People, the propoſals of them were only pretences made uſe of by the Tribunes for promoting ſchemes of a fatal though ſomewhat remote, tendency, to public liberty. Their real aims were at the Conſulſhip, at the Prieſthood, and other offices of Executive power, which they were intended to control, and not to ſhare. To theſe views they continually made the cauſe of the People ſubſervient:—I ſhall relate among other inſtances, the manner in which they procured to themſelves an admittance to the office of Conſul.

Having during ſeveral years, ſeized every opportunity of making ſpeeches to the People on that ſubject, and even excited ſeditions in order to overcome the oppoſition of the Senate, they at laſt availed themſelves of the

circumſtance of an *interregnum* (a time, during which there were no other Magiſtrates in the Republic beſides themſelves), and propoſed to the Tribes, whom they had aſſembled, to enact the three following laws:—the firſt for ſettling the rate of intereſt of money; the ſecond for ordaining that no Citizen ſhould be poſſeſſed of more than five hundred acres of land; and the third, for providing that one of the two Conſuls ſhould be taken from the body of the Plebeians. But on this occaſion it evidently appeared, ſays Livy, which of the laws in agitation were moſt agreeable to the People, and which, to thoſe who propoſed them; for the Tribes accepted the laws concerning the intereſt of money, and the lands; but as to that concerning the Plebeian Conſulſhip, they rejected it: and both the former articles would from that moment have been ſettled, if the Tribunes had not declared, that the Tribes were called either to accept, or reject, all their three propoſals at once *(a)*.

(*a*) "Ab Tribunis, velut per interregnum, concilio "Plebis habito, apparuit quæ ex promulgatis Plebi, quæ "latoribus, gratiora eſſent; nam de fœnore atque agro "rogationes jubebant, de plebeio Conſulatu antiquabant: & perfecta utraque res eſſet, ni Tribuni ſe in "omnia ſimul conſulere Plebem dixiſſent."—*Tit. Liv.* lib. vi. § 39.

Great commotions enſued thereupon, for a whole year; but at laſt the Tribunes, by their perſeverance in inſiſting that the Tribes ſhould vote on their three *rogations*, jointly, obtained their ends, and overcame both the oppoſition of the Senate, and the reluctance of the People.

In the ſame manner did the Tribunes get themſelves made capable of filling all other places of executive power, and public truſt, in the Republic. But when all their views of that kind were accompliſhed, the Republic did not for all this enjoy more quiet, nor was the intereſt of the People better attended to than before. New ſtruggles then aroſe for actual admiſſion to thoſe places; for procuring them to relations, or friends; for governments of provinces; and commands of armies. A few Tribunes, indeed, did at times apply themſelves ſeriouſly, out of real virtue and love of their duty, to remedy the grievances of the People; but both their fellow Tribunes, as we may ſee in Hiſtory, and the whole body of thoſe Men upon whom the People had, at different times, beſtowed Conſulſhips, Ædileſhips, Cenſorſhips, and other dignities without number, united together with the utmoſt ve-

hemence againſt them; and the real Patriots, ſuch as Tiberius Gracchus, Caius Gracchus, and Fulvius, conſtantly periſhed in the attempt.

I have been ſomewhat explicit on the effects produced by the different Revolutions that have happened in the Roman Republic, becauſe its Hiſtory is much known to us, and we have either in Dionyſius of Halicarnaſſus, or Livy, conſiderable monuments of the more ancient part of it. But the Hiſtory of the Grecian Commonwealths would alſo have ſupplied us with a number of facts to the ſame purpoſe. The Revolution, for inſtance, by which the *Piſiſtratidæ* were driven out of Athens—that by which the *Four hundred*, and afterwards the *Thirty*, were eſtabliſhed, as well as that by which the latter were in their turn expelled, all ended in ſecuring the power of *a few*.——The Republic of Syracuſe, that of Corcyra, of which Thucydides has left us a pretty full account, and that of Florence, of which Machiavel has written the Hiſtory, alſo preſent us a ſeries of public commotions ended by treaties, in which, as in the Roman Republic, the grievances of the People, though ever ſo loudly complained of in the beginning by thoſe who acted as their defenders, were,

in the iſſue, moſt careleſsly attended to, or even totally diſregarded *(a)*.

But if we turn our eyes towards the Engliſh Hiſtory, ſcenes of a quite different kind will offer themſelves to our view; and we ſhall find, on the contrary, that Revolutions in England have always been terminated by making ſuch proviſions, and only ſuch, as all orders of the People were really and indiſcriminately to enjoy.

Moſt extraordinary facts, theſe! and which, from all the other circumſtances that accompanied them, we ſee, all along, to have been owing to the impoſſibility (a point that has been ſo much inſiſted upon in former Chapters) in which thoſe who poſſeſſed the confidence of the People, were, of transferring to themſelves any branch of the Executive authority, and thus ſeparating their own condition from that of the reſt of the People.

(*a*) The Revolutions which have formerly happened in France, have all ended like thoſe above mentioned: of this a remarkable inſtance may be ſeen in the note *(a)* p. 29, 30. of this Work. The ſame things are alſo to be obſerved in the Hiſtory of Spain, Denmark, Sweden, Scotland, &c. but I have avoided mentioning States of a Monarchical form, till ſome obſervations are made, which the Reader will find in the XVIIth Chapter.

Not to mention the compacts which were made with the firſt Kings of the Norman line, let us only caſt our eyes on *Magna Charta*, which is ſtill the foundation of Engliſh liberty. A number of circumſtances, which have been deſcribed in the former part of this work, concurred at that time to ſtrengthen the Regal power to ſuch a degree, that no Men in the State could entertain a hope of ſucceeding in any other view than that of ſetting bounds to it. How great was the union which thence aroſe among all orders of the People!—what extent, what caution, do we ſee in the proviſions made by that Great Charter! All the objects for which men naturally wiſh to live in a ſtate of Society, were ſettled in its thirty-eight Articles. The judicial authority was regulated. The perſon and property of the individual were ſecured. The ſafety of the Merchant and ſtranger was provided for. The higher claſs of Citizens gave up a number of oppreſſive privileges which they had long ſince accuſtomed themſelves to look upon as their undoubted rights (*a*). Nay, the imple-

(*a*) All poſſeſſors of lands took the engagement to eſtabliſh in behalf of their Tenants and Vaſſals (*erga ſuos*) the ſame liberties which they demanded from the King.—*Mag. Char. cap.* xxxviii.

ments of tillage of the *Bondman*, or Slave, were alſo ſecured to him; and for the firſt time perhaps in the annals of the World, a civil war was terminated by making ſtipulations in favour of thoſe unfortunate Men to whom the avarice and luſt of dominion inherent in human Nature, continued, over the greateſt part of the Earth, to deny the common rights of Mankind.

Under Henry the Third great diſturbances aroſe; and they were all terminated by ſolemn confirmations given to the Great Charter. Under Edward I. Edward II. Edward III. and Richard II. thoſe who were intruſted with the care of the intereſts of the People, loſt no opportunity that offered, of ſtrengthening ſtill farther that foundation of public liberty, of taking all ſuch precautions as might render the Great Charter ſtill more effectual in the event.—They had not ceaſed to be convinced that their cauſe was the ſame with that of all the reſt of the People.

Henry of Lancaſter having laid claim to the Crown, the Commons received the law from the victorious party. They ſettled the Crown upon Henry, by the name of Henry the Fourth; and added to the Act of Settlement, proviſions which the Reader may ſee in

the ſecond Volume of the *Parliamentary Hiſtory* of England. Struck with the wiſdom of the conditions demanded by the Commons, the Authors of the Book juſt mentioned, obſerve (perhaps with ſome ſimplicity), that the Commons of England *were no fools at that time.* They ought rather to have ſaid,—The Commons of England were happy enough to form among themſelves an Aſſembly in which every one could propoſe what matters he pleaſed, and freely diſcuſs them :—they had no poſſibility left of converting, either theſe advantages, or in general the confidence which the People had placed in them, to any private views of their own : they, therefore, without loſs of time, endeavoured to ſtipulate uſeful conditions with that Power by which they ſaw themſelves at every inſtant expoſed to be diſſolved and diſperſed, and induſtriouſly applied themſelves to inſure the ſafety of the whole People, as it was the only means they had of procuring their own.

In the long contentions which took place between the Houſes of York and Lancaſter, the Commons remained ſpectators of diſorders which, in thoſe times, it was not in their power to prevent: they ſucceſſively acknowledged the title of the victorious parties ; but

whether under Edward the Fourth, under Richard the Third, or Henry the Seventh, by whom thoſe quarrels were terminated, they continually availed themſelves of the importance of the ſervices which they were able to perform to the new eſtabliſhed Sovereign, for obtaining effectual conditions in favour of the whole body of the People.

At the acceſſion of James the Firſt, which as it placed a new Family on the Throne of England, may be conſidered as a kind of Revolution, no demands were made by the Men who were at the head of the Nation, but in favour of general liberty.

After the acceſſion of Charles the Firſt, diſcontents of a very ſerious nature began to take place, and they were terminated in the firſt inſtance, by the Act called the *Petition of Right*, which is ſtill looked upon as a moſt preciſe and accurate delineation of the rights of the People (*a*).

(*a*) The diſorders which took place in the latter part of the reign of that Prince, ſeem indeed to contain a complete contradiction of the aſſertion which is the ſubject of the preſent Chapter; but they, at the ſame time, are a no leſs convincing confirmation of the truth of the principles laid down in the courſe of this whole Work. The above mentioned diſorders took riſe from that day in which Charles the Firſt gave up the power of diſſolving his Parliament; that is, from the day in

At the Reſtoration of Charles the Second, the Conſtitution being re-eſtabliſhed upon its former principles, the former conſequences produced by it, began again to take place; and we ſee at that æra, and indeed during the whole courſe of that Reign, a continued ſeries of precautions taken for ſecuring the general liberty.

Laſtly, the great event which took place in the year 1689, affords a ſtriking confirmation of the truth of the obſervation made in this Chapter. At this æra the political wonder again appeared—of a Revolution terminated by a ſeries of public Acts, in which no intereſts but thoſe of the People at large were conſidered and provided for; no clauſe, even the moſt indirect, was inſerted, either to gratify the preſent ambition, or favour the future views, of thoſe who were perſonally concerned in bringing thoſe Acts to a concluſion. Indeed, if any thing is capable of conveying to us an adequate idea of the ſoundneſs, as well as peculiarity, of the principles on which the Engliſh Government is founded,

which the Members of that Aſſembly acquired an independent, perſonal, laſting authority, which they ſoon began to turn againſt the People who had raiſed them to it.

it is the attentive peruſal of the Syſtem of public Compacts to which the Revolution of the year 1689 gave riſe;—of the Bill of Rights, with all its different clauſes; and of the ſeveral Acts which under two ſubſequent Reigns, till the acceſſion of the Houſe of Hanover, were made in order to ſtrengthen it.

CHAP. XVI.

Second Difference.—The Manner after which the Laws for the Liberty of the Subject are executed in England.

THE ſecond difference which I ſpoke of, between the Engliſh Government and that of other free States, concerns the important object of the execution of the Laws. On this article, alſo, we ſhall find the advantage to lie on the ſide of the Engliſh Government; and, if we make a compariſon between the Hiſtory of thoſe States and that of England, it will lead us to the following

obſervation, viz. that, though in other free States the laws concerning the liberty of the Citizens were imperfect, yet the execution of them was ſtill more defective. In England, on the contrary, the laws for the ſecurity of the Subject, are not only very extenſive in their proviſions, but the manner in which they are executed, carries theſe advantages ſtill farther; and Engliſh Subjects enjoy no leſs liberty from the ſpirit both of juſtice and mildneſs, by which all branches of the Government are influenced, than from the accuracy of the laws themſelves.

The Roman Commonwealth will here again ſupply us with examples to prove the former part of the above aſſertion. When I ſaid, in the foreging Chapter, that, in times of public commotion, no proviſions were made for the body of the People, I meant no proviſions that were likely to prove effectual in the event. When the People were rouſed to a certain degree, or when their concurrence was neceſſary to carry into effect certain reſolutions, or meaſures, that were particularly intereſting to the Men in power, the latter could not, with any prudence, openly profeſs a contempt for the

political wiſhes of the People; and ſome declarations expreſſed in general words, in favour of public liberty, were indeed added to the laws that were enacted on thoſe occaſions. But theſe declarations, and the principles which they tended to eſtabliſh, were afterwards even openly diſregarded in practice.

Thus, when the People were made to vote, about a year after the expulſion of the Kings, that the Regal Government never ſhould be again eſtabliſhed in Rome, and that thoſe who ſhould endeavour to reſtore it, ſhould be devoted to the Gods, an article was added, which, in general terms, confirmed to the Citizens the right they had before enjoyed under the Kings, of appealing to the People from the ſentences of death paſſed upon them. No puniſhment (which will ſurpriſe the Reader) was decreed againſt thoſe who ſhould violate this law; and indeed the Conſuls, as we may ſee in Dionyſius of Halicarnaſſus and Livy, concerned themſelves but little about the appeals of the Citizens, and in the more than military exerciſe of their functions, ſported with rights which they ought to have reſpected, however imperfectly and looſely they had been ſecured.

An article to the ſame purport with the above, was afterwards alſo added to the laws of the Twelve Tables; but the Decemvirs, to whom the execution of thoſe laws was at firſt committed, behaved exactly in the ſame manner, and even worſe than the Conſuls had done before them; and after they were expelled *(a)*, the Magiſtrates who ſucceeded them, appear to have been as little tender of the lives of the Citizens. I ſhall, among many inſtances, relate one which will ſhew upon what ſlight grounds the Citizens were expoſed to have their lives taken away. ——— Spurius Mælius being accuſed of endeavouring to make himſelf King, was ſummoned by the Maſter of the Horſe, to appear before the Dictator, in order to clear himſelf of this ſomewhat extraordinary imputation. Spurius took refuge among the People; the Maſter of the Horſe purſued him, and killed him on the ſpot. The multitude

(*a*) At the expulſion of the Decemvirs, a law was alſo enacted, that no Magiſtrate ſhould be created from whom an appeal could not be made to the People (*Magiſtratus ſine provocatione.* Tit. Liv. book iii. § 55.) by which the People meant to aboliſh the Dictatorſhip: but, from the fact which will juſt now be related, and which happened about ten years afterwards, we ſee that this law was not better obſerved than the others had been.

having thereupon expreſſed a great indignation, the Dictator had them called to his Tribunal, and declared that Spurius had been lawfully put to death, even though he might be innocent of the crime laid to his charge, for having refuſed to appear before the Dictator, when ſummoned to do ſo by the Maſter of the Horſe *(a)*.

About one hundred and forty years after the times we mention, the law concerning the appeals to the People, was enacted for the third time. But we do not ſee that it was better obſerved afterwards than it had been before: and we do not find it frequently violated by the different Magiſtrates of the Republic; but the Senate alſo, notwithſtanding this law, at times made formidable examples of the Citizens. Of this we have an inſtance in the three hundred ſoldiers who had pillaged the Town of Rhegium. The Senate, of its own authority, ordered them all to be put to death. In vain did the Tribune Flaccus remonſtrate againſt ſo ſevere an

(*a*) " Tumultuantem deinde multitudinem, incerta exiſtimatione facti, ad concionem vocari juſſit & *Mælium jure cæſum* pronunciavit, *etiamſi regni crimine inſons fuerit, qui vocatus à Magiſtro equitum, ad Dictatorem non veniſſet.*" Tit. Liv. lib. iv. § 15.

exertion of public juſtice on Roman Citizens; the Senate, ſays Valerius Maximus, nevertheleſs perſiſted in its reſolution *(a)*.

All theſe laws for ſecuring the lives of the Citizens, had hitherto been enacted without any mention being made of a puniſhment againſt thoſe who ſhould violate them. At laſt the celebrated *Lex Porcia* was paſſed, which ſubjected to baniſhment thoſe who ſhould cauſe a Roman Citizen to be ſcourged and put to death. From a number of inſtances poſterior to this law, we ſee that it was not better obſerved than thoſe before it had been: Caius Gracchus, therefore, cauſed the *Lex Sempronia* to be enacted, by which a new ſanction was given to it. But this ſecond law did not ſecure his own life, and that of his friends, better than the *Lex Porcia* had done that of his brother, and thoſe who had ſup-

(*a*) Val. Max. book ii. c. 7. This Author does not mention the preciſe number of thoſe who were put to death on this occaſion; he only ſays that they were executed fifty at a time, in different ſucceſſive days; but other Authors make the number of them amount to four thouſand. Livy ſpeaks of a whole Legion.—*Legio Campana quæ Rhegium occupaverat, obſeſſa, deditione factâ, ſecuri percuſſa eſt.*—Tit. Liv. lib. xv. *Epit.*—I have here followed Polybius, who ſays that only three hundred were taken and brought to Rome.

ported him: indeed, all the events which took place about thoſe times, rendered it manifeſt that the evil was ſuch as was beyond the power of any laws to cure.—I ſhall here mention a fact which affords a remarkable inſtance of the wantonneſs with which the Roman Magiſtrates had accuſtomed themſelves to take away the lives of the Citizens. A Citizen, named Memmius, having put up for the Conſulſhip, and publicly canvaſſing for the ſame, in oppoſition to a Man whom the Tribune Saturninus ſupported, the latter cauſed him to be apprehended, and made him expire under blows in the public Forum. The Tribune even carried his inſolence ſo far, as Cicero informs us, as to give to this act of cruelty, tranſacted in the preſence of the whole People aſſembled, the outward form of a lawful act of public Juſtice *(a)*.

(a) The fatal forms of words *(cruciatûs carmina)* uſed by the Roman Magiſtrates, when they ordered a Man to be put to death, reſounded (ſays Tully in his ſpeech *pro Rabirio*) in the Aſſembly of the People, in which the Cenſors had forbidden the common Executioner ever to appear. *I Lictor, colliga manus. Caput obnubito. Arbore infelici ſuſpendito.*——Memmius being a conſiderable Citizen, as we may conclude from his canvaſſing with ſucceſs for the Conſulſhip, all the great men in the Republic took the alarm at the atrocious

Nor were the Roman Magiſtrates ſatisfied with committing acts of injuſtice in their political capacity, and for the ſupport of the power of that Body of which they made a part. Avarice and private rapine were at laſt added to political ambition. The Provinces were firſt oppreſſed and plundered. The calamity, in proceſs of time, reached Italy itſelf, and the centre of the Republic; till at laſt the *Lex Calpurnia de repetundis* was enacted to put a ſtop to it. By this law, an action was given to the Citizens and Allies for the recovery of the money extorted from them by Magiſtrates, or Men in power; and the *Lex Junia* afterwards added the penalty of baniſhment to the obligation of making reſtitution.

But here another kind of diſorder aroſe. The Judges proved as corrupt, as the Magiſtrates had been oppreſſive. They equally betrayed, in their own province, the cauſe of the Republic with which they had been intruſted; and rather choſe to ſhare in the plunder of the Conſuls, the Prætors, and the

action of the Tribune: the Senate, the next day, iſſued out its ſolemn mandate to the Conſuls, *to provide that the Republic ſhould receive no detriment*; and the Tribune was killed in a pitched battle that was fought at the foot of the Capitol.

Proconſuls, than put the laws in force againſt them.

New expedients were, therefore, reſorted to, in order to remedy this new evil. Laws were made for judging and puniſhing the Judges themſelves; and above all, continual changes were made in the manner of compoſing their Aſſemblies. But the malady lay too deep for common legal proviſions to remedy. The guilty Judges employed the ſame reſources in order to avoid conviction, that the guilty Magiſtrates had done; and thoſe continual changes at which we are amazed, which were made in the conſtitution of the judiciary Bodies *(a)*, inſtead of obviating the cor-

(*a*) The Judges, (over the Aſſembly of whom the Prætor uſually preſided) were taken from the body of the Senate, till ſome years after the laſt Punic War; when the *Lex Sempronia*, propoſed by Caius S. Gracchus, enacted that they ſhould in future be taken from the Equeſtrian Order. The Conſul Cæpio procured afterwards a law to be enacted, by which the Judges were to be taken from both orders, equally. The *Lex Servilia* ſoon after put the Equeſtrian Order again in poſſeſſion of the *Judgments*; and after ſome years, the *Lex Livia* reſtored them entirely to the Senate.—The *Lex Plautia* enacted afterwards, that the Judges ſhould be taken from the three Orders; the Senatorian, Equeſtrian, and Plebeian. The *Lex Cornelia*, framed by the Dictator

ruption of the Judges, only transferred to other Men the profit ariſing from becoming guilty of it. It was grown to be a general complaint, ſo early as the times of the Gracchi, that no Man who had money to give, could be brought to puniſhment *(a)*. Cicero ſays, that in his time, the ſame opinion was become ſettled and univerſally received *(b)*; and his Speeches are full of his lamentations on what he calls the *levity*, and the *infamy*, of the public Judgments.

Nor was the impunity of corrupt Judges, the only evil under which the Republic laboured. Commotions of the whole Empire at laſt took place. The horrid vexations, and afterwards the acquittal, of Aquilius, Proconſul of Syria, and of ſome others, who had been guilty of the ſame crimes, drove the Provinces of Aſia to deſperation: and it was then, that that terrible war of Mithri-

Sylla, enacted again that the Judges ſhould be entirely taken from the body of the Senate. The *Lex Aurelia* ordered anew, that they ſhould be taken from the three orders. Pompey made afterwards a change in their number, which he fixed at ſeventy-five, and in the manner of electing them. And laſtly, Cæſar entirely reſtored ~~the~~ the Judgments to the Order of the Senate.

(a) App. de Bell. Civ. *(b)* Act. in Verr. i. § 1.

dates aroſe, which was uſhered in by the death of eighty thouſand Romans, maſſacred in one day, in all the Cities of Aſia *(a)*.

The Laws and public Judgments not only thus failed of the end for which they had been eſtabliſhed: they even became, at laſt, new means of oppreſſion added to thoſe which already exiſted. Citizens poſſeſſed of wealth, perſons obnoxious to particular Bodies, or the few Magiſtrates who attempted to ſtem the torrent of the general corruption, were accuſed and condemned; while Piſo, of whom Cicero, in his ſpeech againſt him, relates things which make the Reader ſhudder with horror, and Verres, who had been guilty of enormities of the ſame kind, eſcaped unpuniſhed.

Hence a war aroſe ſtill more formidable than the former, and the dangers of which we wonder that Rome was able to ſurmount. The greateſt part of the Italians revolted at once, exaſperated by the tyranny of the public Judgments; and we find in Cicero, who informs us of the cauſe of this revolt, which was called the *Social war*, a very expreſſive

(*a*) Appian.

account both of the unfortunate condition of the Republic, and of the perverſion that had been made of the methods taken to remedy it.—"An hundred and ten years are not yet elapſed (ſays he) ſince the law for the recovery of money extorted by Magiſtrates was firſt propounded by the Tribune Calpurnius Piſo. A number of other laws to the ſame effect, continually more and more ſevere, have followed: but ſo many perſons have been accuſed, ſo many condemned, ſo formidable a war has been excited in Italy by the terror of the public Judgments, and when the laws and Judgments have been ſuſpended, ſuch an oppreſſion and plunder of our Allies has prevailed, that we may truly ſay, that it is not by our own ſtrength, but by the weakneſs of others, that we continue to exiſt *(a)*."

I have entered into theſe particulars with regard to the Roman Commonwealth, becauſe the facts on which they are grounded, are remarkable of themſelves, and yet no juſt concluſion could be drawn from them, unleſs a ſeries of them were preſented to the Reader. Nor are we to account for theſe facts, by the luxury which prevailed in the latter ages of the Republic, by the corruption of

(*a*) See Cic. de Off. lib. ii. § 75.

the manners of the Citizens, their degeneracy from their ancient principles, and ſuch like looſe general phraſes, which may perhaps be uſeful to expreſs the manner itſelf in which the evil became manifeſted, but by no means account for the cauſes of it.

The above diſorders aroſe from the very nature of the Government of the Republic,—of a Government in which the Executive and Supreme Power being made to centre in the Body of thoſe in whom the People had once placed their confidence, there remained no other effectual Power in the State that might render it neceſſary for them to keep within the bounds of juſtice and decency. And, in the mean time, as the People, who were intended as a check over that Body, continually gave a ſhare in this Executive authority to thoſe whom they intruſted with the care of their intereſts, they increaſed the evils they complained of, as it were at every attempt they made to remedy them; and inſtead of raiſing up Opponents to thoſe who were become the enemies of their liberty, as it was their intention to do, they continually ſupplied them with new Aſſociates.

From this ſituation of affairs, flowed as an unavoidable conſequence, that continual deſertion of the cauſe of the People, which, even in time of Revolutions, when the paſſions of the People themſelves were rouſed, and they were in a great degree united, manifeſted itſelf in ſo remarkable a manner. We may trace the ſymptoms of the great political defect here mentioned, in the earlieſt ages of the Commonwealth, as well as in the laſt ſtage of its duration. In Rome, while ſmall and poor, it rendered vain whatever rights or power the People poſſeſſed, and blaſted all their endeavours to defend their liberty, in the ſame manner as, in the more ſplendid ages of the Commonwealth, it rendered the moſt ſalutary regulations utterly fruitleſs, and even inſtrumental to the ambition and avarice of a few. The prodigious fortune of the Republic, in ſhort, did not create the diſorder, it only gave full ſcope to it.

But if we turn our view towards the Hiſtory of the Engliſh Nation, we ſhall ſee how, from a Government in which the above defects did not exiſt, different conſequences have followed :—how cordially all ranks of Men have always united together to lay under proper re-

ſtraints this Executive power, which they knew could never be their own. In times of public Revolutions, the greateſt care, as we have before obſerved, was taken to aſcertain the limits of that Power; and after peace had been reſtored to the State, thoſe who remained at the head of the Nation, continued to manifeſt an unwearied jealouſy in maintaining thoſe advantages which the united efforts of all had obtained.

Thus it was made one of the Articles of Magna Charta, that the Executive Power ſhould not touch the perſon of the Subject, but in conſequence of a judgment paſſed upon him by his peers: and ſo great was afterwards the general union in maintaining this law, that the *Trial by Jury*, that admirable mode of proceeding which ſo effectually ſecures the Subject againſt all the invaſions of Power, even (what ſeemed ſo difficult to attain) againſt thoſe which might be made under the ſanction of the Judicial authority, has been preſerved to this day. It has even been preſerved in all its original purity, though the ſame has been ſucceſſively ſuffered to decay, and then to be loſt, in the other Countries of Europe, where it had been formerly

known *(a)*. Nay, though this privilege of being tried by one's peers, was at firſt a privilege of Conquerors and Maſters, excluſively appropriated to thoſe parts of Nations which had originally invaded and ſubdued the reſt by arms, it has in England been ſucceſſively extended to every Order of the People.

And not only the perſon, but alſo the property of the individual, has been ſecured againſt all arbitrary attempts from the Executive power, and the latter has been ſucceſ-

(a) The Trial by Jury was in uſe among the Normans long before they came over to England; but it is now utterly loſt in that Province: it even began very early to degenerate there from its firſt inſtitution; we ſee in Hale's Hiſtory of the *Common Law* of England, that the unanimity among Jurymen was not required in Normandy for making a verdict, a good verdict; but when Jurymen diſſented, a number of them was taken out, and others added in their ſtead, till an unanimity was procured.—In Sweden, where, according to the opinion of the Learned in that Country, the *Trial by Jury* had its firſt origin, only ſome forms of that Inſtitution are now preſerved in the lower Courts in the Country, where ſets of Jurymen are eſtabliſhed for life, and have a ſalary accordingly. See *Robinſon's State of Sweden.*—And in Scotland, the vicinity of England has not been able to preſerve to the Trial by Jury its genuine ancient form: the unanimity among Jurymen is not required there, as I have been told, to form a Verdict; but the majority is deciſive.

ſively reſtrained from touching any part of the property of the Subject, even under pretence of the neceſſities of the State, any otherwiſe than by the free grant of the Repreſentatives of the People. Nay, ſo true and perſevering has been the zeal of theſe Repreſentatives, in aſſerting on that account the intereſts of the Nation, from which they could not ſeparate their own, that this privilege of taxing themſelves, (which was in the beginning grounded on a moſt precarious tenure, and only a mode of governing adopted by the Sovereign for the ſake of his own convenience), has become, in length of time, a ſettled right of the People, which the Sovereign has found it at laſt neceſſary ſolemnly and repeatedly to acknowledge.

Nay more, the Repreſentatives of the People have applied this Right of *Taxation* to a ſtill nobler uſe than the mere preſervation of property; they have, in proceſs of time, ſucceeded in converting it into a regular and conſtitutional means of influencing the motions of the Executive Power. By means of this Right, they have gained the advantage of being conſtantly called to concur in the meaſures of the Sovereign,—of having the greateſt

attention ſhewn by him to their requeſts, as well as the higheſt regard paid to any engagements that he enters into with them. Thus has it become at laſt the peculiar happineſs of Engliſh Subjects (to whatever other People, either ancient or modern, we compare them) to enjoy a ſhare in the Government of their Country, by electing Repreſentatives, who, by reaſon of the peculiar circumſtances they are placed in, and the extenſive rights they poſſeſs, are both *willing* faithfully to ſerve thoſe who have appointed them, and *able* to do it.

And indeed the Commons have not reſted ſatisfied with eſtabliſhing, once for all, the proviſions for the liberty of the People which have been juſt mentioned: they have afterwards made the preſervation of them, the firſt object of their cares *(a)*, and taken every opportunity of giving them new life and vigour.

(a) The firſt operation of the Commons, at the beginning of a Seſſion, is to appoint four grand Committees. The one is a Committee of Religion, another of Courts of Juſtice, another of Trade, and another of Grievances: they are to be ſtanding Committees during the whole Seſſion.

Thus, uuder Charles the Firſt, when attacks of a moſt alarming nature had been made on the privilege of the People to grant free ſupplies to the Crown, the Commons vindicated, without loſs of time, that great right of the Nation, which is the Conſtitutional bulwark of all others, and haſtened to oppugn, in their beginning, every precedent of a practice that muſt in the end have produced the ruin of public liberty.

They even extended their care to abuſes of every kind. The judicial authority, for inſtance, which the Executive Power had imperceptibly aſſumed to itſelf, both with reſpect to the perſon and property of the individual, wasabrogated by the Act which aboliſhed the Court of Star Chamber; and the Crown was thus brought back to its true Conſtitutional office, viz. the countenancing, and ſupporting with its ſtrength, the execution of the Laws.

The ſubſequent endeavours of the Legiſlature have carried even to a ſtill greater extent the above privileges of the People. They have morever ſucceeded in reſtraining the Crown from any attempt to ſeize and confine, even for the ſhorteſt time, the perſon of the Subject, unleſs it be in the caſes aſcertained by the Law, of which the Judges of it are to decide.

Nor has this extenſive unexampled freedom, at the expence of the Executive Power, been made, as we might be inclinable to think, the excluſive appropriated privilege of the great and powerful. It is to be enjoyed alike by all ranks of Subjects: nay, it was the injury done to a common Citizen that gave exiſtence to the Act which has completed the ſecurity of this intereſting branch of public liberty. "The oppreſſion of an obſcure individual," ſays Judge Blackſtone, "gave riſe to the famous *Habeas Corpus* Act:" Junius has quoted this obſervation of the Judge; and the ſame is well worth repeating a third time, for the juſt idea it conveys of that readineſs of all Orders of Men to unite in defence of common liberty, which is a characteriſtic circumſtance in the Engliſh Government *(a)*.

And this general union, in favour of public liberty, has not been confined to the framing

(a) The individual here alluded to was one Francis Jenks, who having made a motion at Guildhall, in the year 1676, to petition the King for a new Parliament, was examined before the Privy Council, and afterwards committed to the Gate-houſe, where he was kept about two months, through the delays made by the ſeveral Judges to whom he applied, in granting him a *Habeas Corpus*.—See the *State Trials*, vol. vii. anno 1676.

of laws for its ſecurity: it has operated with no leſs vigour in bringing to puniſhment ſuch as have ventured to infringe them; and the Sovereign has conſtantly found it neceſſary to give up the violators of thoſe laws, even when his own ſervants, to the Juſtice of their Country.

Thus we find, ſo early as the reign of Edward the Firſt, Judges who were convicted of having committed exactions in the exerciſe of their offices, to have been condemned by a ſentence of Parliament (*a*). From the immenſe fines which were laid upon them, and which it ſeems they were in a condition to pay, we may indeed conclude that, in thoſe early ages of the Conſtitution, the remedy was applied rather late to the diſorder; but yet it was at laſt applied.

Under Richard the Second, examples of the ſame kind were renewed. Michael de la Pole, Earl of Suffolk, who had been Lord Chancellor of the kingdom, the Duke of Ireland, and the Archbiſhop of York, having

(*a*) Sir Ralph de Hengham, Chief Juſtice of the King's Bench, was fined 7000 marks; Sir Thomas Wayland, Chief Juſtice of the Common Pleas, had his whole eſtate forfeited; and Sir Adam de Stratton, Chief Baron of the Exchequer, fined 34000 marks.

abuſed their power by carrying on deſigns that were ſubverſive of public liberty, were declared guilty of High-treaſon; and a number of Judges who, in their judicial capacity, had acted as their inſtruments, were involved in the ſame condemnation *(a)*.

Under the reign of Henry the Eighth, Sir Thomas Empſon, and Edmund Dudley, who

(*a*) The moſt conſpicuous among theſe Judges were Sir Robert Belknap, and Sir Robert Treſilian, Chief Juſtice of the King's Bench. The latter had drawn up a ſtring of queſtions calculated to confer a deſpotic authority on the Crown, or rather on the Miniſters above named, who had found means to render themſelves entire Maſters of the perſon of the King. Theſe queſtions Sir Robert Treſilian propoſed to the Judges, who had been ſummoned for that purpoſe, and they gave their opinions in favour of them. One of theſe opinions of the Judges, among others, tended to no leſs than to annihilate, at one ſtroke, all the rights of the Commons, by taking from them that important privilege mentioned before, of ſtarting and freely diſcuſſing, whatever ſubjects of debate they think proper—the Commons were to be reſtrained, under pain of being puniſhed as traitors, from proceeding upon any articles beſides thoſe limited to them by the King. All thoſe who had had a hand in the above declarations of the Judges, were attainted of high-treaſon. Some were hanged; among them was Sir Robert Treſilian; and the others were only baniſhed, at the interceſſion of the Biſhops.—See the Parl. Hiſtory of England, vol. i.

had been the promoters of the exactions committed under the preceding reign, fell victims to the zeal of the Commons for vindicating the cauſe of the People. Under King James the Firſt, Lord Chancellor Bacon experienced, that neither his high dignity, nor great perſonal qualifications, could ſcreen him from having the ſevereſt cenſure paſſed upon him, for the corrupt practices of which he had ſuffered himſelf to become guilty. And under Charles the Firſt, the Judges having attempted to imitate the example of the Judges under Richard the Second, by delivering opinions ſubverſive of the rights of the People, found the ſame ſpirit of watchfulneſs in the Commons, as had proved the ruin of the former. Lord Finch, Keeper of the Great Seal, was obliged to fly beyond ſea. The Judges Davenport and Crawley were impriſoned: and Judge Berkley was ſeized while ſitting upon the Bench, as we find in Ruſhworth.

In the reign of Charles the Second, we again find freſh inſtances of the vigilance of the Commons. Sir William Scroggs, Lord Chief Juſtice of the King's-Bench, Sir Francis North, Chief Juſtice of the Common Pleas, Sir Thomas Jones, one of the Judges of the

King's-Bench, and Sir Richard Weſton, one of the Barons of the Exchequer, were impeached by the Commons, for partialities ſhewn by them in the adminiſtration of juſtice; and Chief Juſtice Scroggs, againſt whom ſome poſitive charges were well proved, was removed from his employments.

The ſeveral examples offered here to the Reader, have been taken from ſeveral different periods of the Engliſh Hiſtory, in order to ſhew that neither the influence, nor the dignity, of the infractors of the laws, even when they have been the neareſt Servants of the Crown, have ever been able to check the zeal of the Commons in aſſerting the rights of the People. Other examples might perhaps be related to the ſame purpoſe; though the whole number of thoſe to be met with, will, upon enquiry, be found the ſmaller, becauſe the danger of infringing the laws has always been indubitable.

So much regularity has even (from all the circumſtances above mentioned) been introduced into the operations of the Executive Power in England,—ſuch an exact Juſtice have the People been accuſtomed, in conſequence, to expect from that quarter, that even the Sovereign, for his having once ſuf-

fered himſelf perſonally to violate the ſafety of the ſubject, did not eſcape ſevere cenſure. The attack made by order of Charles the Second, on the perſon of Sir John Coventry, filled the Nation with aſtoniſhment; and this violent gratification of private paſſion, on the part of the Sovereign (a piece of ſelf-indulgence with regard to inferiors, which whole claſſes of individuals in certain Countries almoſt think that they have a right to) excited a general ferment. "This event (ſays Biſhop "Burnet) put the Houſe of Commons in a "furious uproar....It gave great advantages "to all thoſe who oppoſed the Court; and "the names of the *Court* and *Country* party, "which till now had ſeemed to be forgotten, "were again revived (*a*)."

Theſe are the limitations that have been ſet, in the Engliſh Government, on the operations of the Executive Power: limitations to which we find nothing comparable in any other free States, ancient or modern; and which are owing, as we have ſeen, to that

(*a*) See Burnet's Hiſtory, vol. i. anno 1669.—An Act of Parliament was made on this occaſion, for giving a farther extent to the proviſions before made for the perſonal ſecurity of the Subject; which is ſtill called the *Coventry* Act.

very circumſtance which ſeemed at firſt ſight to prevent the poſſibility of them, I mean the greatneſs and unity of that Power; the effect of which has been, in the event, to unite upon the ſame object, the views and efforts of all Orders of the People.

From this circumſtnnce, that is, the peculiar ſtrength and ſtability of the Executive Power in England, another moſt advantageous conſequence has followed (which has been before taken notice of, and which it is not improper to mention again here, as this Chapter is intended to confirm the principles laid down in the former ones), I mean the unremitted continuance of the ſame general union among all ranks of Men, and the ſpirit of mutual juſtice which thereby continues to be diffuſed through all orders of Subjects.

Though ſurrounded by the many boundaries that have juſt now been deſcribed, the Crown, we muſt obſerve, has preſerved its Prerogative undivided: it ſtill poſſeſſes its whole effective ſtrength, and is only tied by its own engagements, and the conſideration of what it owes to its deareſt intereſts.

The great, or wealthy Men in the Nation, who, aſſiſted by the body of the People, have ſucceeded in reducing the exerciſe of its au-

thority within ſuch well defined limits, can have no expectation that it will continue to confine itſelf to them, any longer than they themſelves continue, by the juſtice of their own conduct, to deſerve that ſupport of the People which alone can make them appear of any conſequence in the eye of the Sovereign,—no probable hopes that the Crown will continue to obſerve thoſe laws by which their wealth, dignity, liberty, are protected, any longer than they themſelves alſo continue to obſerve them.

Nay more, all thoſe claims of their rights which they continue to make againſt the Crown, are encouragements which they give to the reſt of the People to aſſert their own rights againſt them. Their conſtant oppoſition to all arbitrary proceedings of that Power, is a continual declaration they make againſt any acts of oppreſſion, which the ſuperior advantages they enjoy, might entice them to commit on their inferior fellow-ſubjects.—Nor was that ſevere cenſure, for inſtance, which they concurred in paſſing on an unguarded violent action of their Sovereign, only a reſtraint put on the perſonal actions of future Engliſh Kings: no, it was a much more extenſive proviſion for the ſecuring of

public liberty;—it was a ſolemn engagement entered into by all the powerful Men in the State to the whole body of the People, ſcrupulouſly to reſpect the perſon of the loweſt among them.

And indeed the conſtant tenour of the conduct even of the two Houſes of Parliament ſhews us, that the above obſervations are not matters of mere ſpeculation. From the earlieſt times we ſee the Members of the Houſe of Commons to have been very cautious not to aſſume any diſtinction that might alienate from them the affections of the reſt of the People (*a*). Whenever thoſe privileges which were neceſſary to them for the diſcharge of their truſt have proved burdenſome to the Community, they have retrenched them. And thoſe of their Members who have applied either theſe privileges, or in general

(*a*) In all caſes of public offences, down to a ſimple breach of the peace, the Members of the Houſe of Commons have no privilege whatever above the reſt of the People: they may be committed to priſon by any Juſtice of the peace; and are dealt with afterwards in the ſame manner as any other Subjects. With regard to civil matters, their only privilege is to be free from Arreſts during the time of a Seſſion, and forty days before, and forty days after; but they may be ſued, by proceſs againſt their goods, for any juſt debt during that time.

that influence which they derived from their ſituation, to any oppreſſive purpoſes, they themſelves have endeavoured to bring to puniſhment.

Thus, we ſee, that, in the reign of James the Firſt, Sir Giles Mompeſſon, a Member of the Houſe of Commons, having been guilty of Monopolies and other acts of great oppreſſion on the People, was not only expelled, but impeached and proſecuted with the greateſt warmth by the Houſe, and finally condemned by the Lords to be publicly degraded from his rank of a Knight, held for ever an infamous perſon, and impriſoned during life.

In the ſame reign, Sir John Bennet, who was alſo a Member of the Houſe of Commons, having been found to have been guilty of ſeveral corrupt practices, in his capacity of Judge of the *Prerogative* Court of Canterbury, ſuch as taking exorbitant fees, and the like, was expelled the Houſe, and proſecuted for theſe offences.

In the year 1641, Mr. Henry Benſon, Member for Knareſborough, having been detected in ſelling protections, experienced likewiſe the indignation of the Houſe, and was expelled.

In fine, in order as it were to make it completely notorious, that neither the condition of Repreſentative of the People, nor even any degree of influence in their Houſe, could excuſe any one of them from ſtrictly obſerving the rules of juſtice, the Commons did on one occaſion paſs the moſt ſevere cenſure they had power to inflict, upon their Speaker himſelf, for having, in a ſingle inſtance, attempted to convert the diſcharge of his duty as Speaker into a means of private emolument.——Sir John Trevor, Speaker of the Houſe of Commons, having, in the ſixth year of the reign of King William, received a thouſand guineas from the City of London, "as a gra-" tuity for the trouble he had taken with re-" gard to the paſſing of the *Orphan Bill*," was voted guilty of a High crime and miſdemeanour, and expelled the Houſe. Even the inconſiderable ſum of twenty guineas which Mr. Hungerford, another Member of that Houſe, had been weak enough to accept on the ſame ſcore, was looked upon as deſerving the notice of the Houſe; and he was likewiſe expelled (*a*).

(*a*) Other examples of the attention of the Houſe of Commons to the conduct of their Members, might be produced, either before, or after, that which is mentioned here. The reader may, for inſtance, ſee the re-

If we turn our view towards the Houſe of Lords, we ſhall find that they alſo have conſtantly taken care, that their peculiar privileges ſhould not prove impediments to the common juſtice which is due to the reſt of the People (*a*). They have conſtantly agreed to every juſt propoſal that has been made to them on that ſubject by the Commons: and indeed, if we conſider the numerous and oppreſſive privileges claimed by the *Nobles* in moſt other Countries, and the vehement ſpirit with which they are commonly aſſerted, we ſhall think it no ſmall praiſe to the body of the Nobility in England (and alſo to the nature of that Government of which they make

lation of their proceedings in the affair of the *South Sea Company* Scheme; and a few years after, in that of the *Charitable Corporation*; a fraudulent ſcheme particularly oppreſſive to the poor, for which ſeveral Members were expelled.

(*a*) In caſe of a public offence, or even a ſimple breach of the peace, a Peer may be committed, till he finds bail, by any Juſtice of the peace: and Peers are to be tried by the common courſe of law, for all offences under felony. With regard to civil matters, they are at all times free from *arreſts*; but execution may be had againſt their effects, in the ſame manner as againſt thoſe of other Subjects,

a part) that it has been by their free conſent that their privileges have been confined to what they now are; that is to ſay, to no more, in general, than what is neceſſary to the accompliſhment of the end and conſtitutional deſign of that Houſe.

In the exerciſe of their Judicial authority with regard to civil matters, the Lords have manifeſted a ſpirit of equity nowiſe inferior to that which they have ſhewn in their Legiſlative capacity. They have, in the diſcharge of that function, (which of all others is ſo liable to create temptations) ſhewn an uncorruptneſs really ſuperior to what any judicial Aſſembly in any other Nation can boaſt. Nor do I think that I run any riſk of being contradicted, when I ſay that the conduct of the Houſe of Lords, in their civil judicial capacity, has conſtantly been ſuch as has kept them above the reach of even ſuſpicion or ſlander.

Even that privilege which they enjoy, of excluſively trying their own Members, in caſe of any accuſation that may affect their life (a privilege which we might at firſt ſight think repugnant to the idea of a regular Government, and even alarming to the reſt of the People) has conſtantly been made uſe of

by the Lords to do juſtice to their fellow-ſubjects; and if we caſt our eyes either on the collection of the *State Trials*, or on the Hiſtory of England, we ſhall find very few examples, if any, of a Peer, really guilty of the offence laid to his charge, that has derived any advantage from his not being tried by a Jury of *Commoners*.

Nor has this juſt and moderate conduct of the two Houſes of Parliament in the exerciſe of their powers (a moderation ſo unlike what has been related of the conduct of the powerful Men in the Roman Republic) been the only happy conſequence of that ſalutary jealouſy which thoſe two Bodies entertain of the power of the Crown. The ſame motive has alſo engaged them to exert their utmoſt endeavours to put the Courts of Juſtice under proper reſtraints: a point of the higheſt importance to public liberty.

They have, from the earlieſt times, preferred complaints againſt the influence of the Crown over theſe Courts, and at laſt procured Laws to be enacted in order to prevent it: all which meaſures, we muſt obſerve, were ſtrong declarations that no Subjects were to think themſelves exempt from ſubmitting to the uniform courſe of the Law. And the ſevere

examples which they have concurred to make on thoſe Judges who had rendered themſelves the inſtruments of the paſſions of the Sovereign, or of the views of his Miniſters, are alſo awful warnings to the Judges who have ſucceeded them, never to attempt to deviate in favour of any, the moſt powerful, individuals, from that ſtrait line of Juſtice, which the joint Wiſdom of the three branches of the Legiſlature, has once marked out to them.

This ſingular ſituation of the Engliſh Judges relatively to the three Conſtituent Powers of the State, (and alſo the formidable ſupport which they are certain to receive from them as long as they continue to be the faithful Miniſters of Juſtice) has at laſt created ſuch an impartiality in the diſtribution of public Juſtice in England, has introduced into the Courts of Law the practice of ſuch a thorough diſregard of either the influence or wealth of the contending Parties, and procured to every individual; both ſuch an eaſy acceſs to theſe Courts, and ſuch a certainty of redreſs in them, as are not to be paralleled in any other Government.—Philip de Comines, ſo long as three hundred years ago, commended in ſtrong terms the exactneſs with which Juſtice is done in England to all ranks of Sub-

jects (*a*); and the impartiality with which the ſame is adminiſtered in theſe days, will, with ſtill more reaſon, create the ſurpriſe of every Stranger who has an opportunity of obſerving the cuſtoms of this Country (*b*).

(*a*) See page 36 of this Work.

(*b*) A little after I came to England for the firſt time (if the Reader will give me leave to make mention of myſelf in this caſe) an action was brought in a Court of Juſtice againſt a Prince very nearly related to the Crown; and a Noble Lord was alſo, much about that time, engaged in a law-ſuit for the property of ſome valuable lead-mines in Yorkſhire. I could not but obſerve, that in both theſe caſes a deciſion was given againſt the two moſt powerful parties; though I wondered but little at this, becauſe I had before heard much of the impartiality of the law proceedings in England, and was prepared to ſee inſtances of that kind. But what I was much ſurpriſed at, I confeſs, was that nobody appeared to be in the leaſt ſo, not even at the ſtrictneſs with which the ordinary courſe of the law had, particularly in the former caſe, been adhered to,—and that thoſe proceedings which I was diſpoſed to conſider as great inſtances of Juſtice, to the production of which ſome circumſtances peculiar to the times, at leaſt ſome uncommon virtue or ſpirit on the part of the Judges, muſt have more or leſs co-operated, were looked upon by all thoſe whom I heard ſpeak about it, as being nothing more than the common and expected courſe of things. This circumſtance became a ſtrong inducement to me to enquire into the nature of a Government by which ſuch effects were produced.

Indeed, to ſuch a degree of impartiality has the adminiſtration of public Juſtice been brought in England, and that is ſaying nothing beyond the exact truth, to affirm that any violation of the laws, though perpetrated by Men of the moſt extenſive influence, nay, though committed by the ſpecial direction of the very firſt Servants of the Crown, will be publicly and completely redreſſed. And the very loweſt of ſubjects will obtain ſuch redreſs, if he has but ſpirit enough to ſtand forth, and appeal to the laws of his Country.—Moſt extraordinary circumſtances theſe! which thoſe who know the difficulty that there is in eſtabliſhing juſt laws among Mankind, and in providing afterwards for their due execution, only find credible becauſe they are matters of fact, and can begin to account for, only when they look up to the conſtitution of the Government itſelf; that is to ſay, when they conſider the circumſtances in which the Executive Power of the Crown, is placed in relation to the two Bodies that concur with it to form the Legiſlature,—the circumſtances in which thoſe two Aſſemblies are placed in relation to the Crown, and to each other, and the ſituation in which all

the three find themſelves with reſpect to the whole Body of the People *(a)*.

(a) The aſſertion above made with reſpect to the impartiality with which Juſtice is, in all caſes, adminiſtered in England, not being of a nature to be proved by alledging ſingle facts, I have entered into no particulars on that account. However, I have ſubjoined here two caſes which, I think, cannot but appear remarkable to the Reader.

The firſt is the caſe of the proſecution commenced in the year 1763, by ſome Journeymen Printers, againſt the King's Meſſengers, for apprehending and impriſoning them for a ſhort time, by virtue of a *General Warrant* from the Secretaries of State; and that which was afterwards carried on by another private individual againſt one of the Secretaries themſelves.——In theſe actions, all the ordinary forms of proceeding uſed in caſes of actions between private Subjects, were ſtrictly adhered to; and both the Secretary of State, and the Meſſengers, were, in the end, condemned. Yet, which it is fit the Reader ſhould obſerve, from all the circumſtances that accompanied this affair, it is difficult to propoſe a caſe in which Miniſters could, of themſelves, be under greater temptations to exert an undue influence to hinder the ordinary courſe of Juſtice. Nor were the Acts for which thoſe Miniſters were condemned, Acts of evident oppreſſion, which nobody could be found to juſtify. They had done nothing but follow a practice of which they found ſeveral precedents eſtabliſhed in their Offices; and their caſe, if I am well informed, was ſuch, that moſt individuals, under ſimilar circumſtances, would have

In fine, a very remarkable circumſtance in the Engliſh Government, (and which alone evinces ſomething peculiar and excellent in its Nature) is that ſpirit of extreme mildneſs with which Juſtice in criminal caſes, is adminiſtered in England; a point with regard to which England differs from all other Countries in the World.

thought them ſelves authoriſed to have acted as they had done.

The ſecond caſe I propoſe to relate, affords a ſingular inſtance of the confidence with which all Subjects in England claim what they think their juſt rights, and of the certainty with which the remedies of the law are in all caſes open to them. The fact I mean, is the Arreſt executed in the reign of Queen Anne, in the year 1708, on the perſon of the Ruſſian Ambaſſador, by taking him out of his Coach for the ſum of fifty pounds—And the conſequences that followed this fact are ſtill more remarkable. The Czar highly reſented this affront, and demanded that the Sheriff of Middleſex, and all others concerned in the Arreſt, ſhould be puniſhed with inſtant death. "But the "Queen," (to the amazement of that deſpotic Court, ſays Juſtice Blackſtone, from whom I borrow this fact) "the Queen directed the Secretary of State to inform "him, that ſhe could inflict no puniſhment upon any, "the meaneſt, of Her Subjects, unleſs warranted by "the law of the land."—An act was afterwards paſſed to free from arreſts the perſons of foreign Miniſters, and ſuch of their Servants as they have delivered a liſt of, to the Secretary of State. A copy of this Act,

When we conſider the puniſhments in uſe in the other States of Europe, we wonder how Men can be brought to treat their fellow-creatures with ſo much cruelty; and the bare conſideration of thoſe puniſhments would ſufficiently convince us (ſuppoſing we did not know the fact from other circumſtances) that the Men in thoſe States who frame the laws, and preſide over their execution, have little apprehenſion that either they, or their friends, will ever fall victims to thoſe laws which they thus raſhly eſtabliſh.

In the Roman Republic, circumſtances of the ſame nature with thoſe juſt mentioned, were alſo productive of the greateſt defects in the kind of criminal Juſtice which took place in it. That claſs of Citizens who were at the head of the Republic, and who knew how mutually to exempt each other from the operation of any too ſevere laws or practice, not only allowed themſelves great liberties, as we have ſeen, in diſpoſing of the lives of the inferior Citizens, but had alſo introduced into the exerciſe of the illegal powers they

elegantly engroſſed and illuminated, continues Judge Blackſtone, was ſent to Moſcow, and an Ambaſſador extraordinary commiſſioned to deliver it.

aſſumed to themſelves in that reſpect, a great degree of cruelty. (*a*).

Nor were things more happily conducted in the Grecian Republics. From their Democratical nature, and the frequent Revolutions to which they were ſubject, we naturally expect to ſee that authority to have been uſed with mildneſs, which thoſe who enjoyed it muſt have known to have been but precarious; yet, ſuch were the effects of the violence attending thoſe very Revolutions, that a ſpirit both of great irregularity and cruelty had taken place among the Greeks, in the exerciſe of the power of inflicting puniſhments. The very harſh laws of *Draco* are well known, of which it was ſaid, that they were not written with ink, but with blood. The ſevere laws of the Twelve Tables among the Romans, were in great part brought over from Greece. And it was an opinion commonly

(*a*) The common manner in which the Senate ordered Citizens to be put to death, was by throwing them head-long from the top of the Tarpeian Rock. The Conſuls, or other particular Magiſtrates, ſometimes cauſed Citizens to expire upon a croſs; or, which was a much more common caſe, ordered them to be ſcourged to death, with their heads faſtened between the two branches of a fork; which they called *cervicem furcæ inſerere.*

received in Rome, that the cruelties practiſed by the Magiſtrates on the Citizens, were only imitations of the examples which the Greeks had given them *(a)*.

In fine, the uſe of Torture, that method of adminiſtering Juſtice in which folly may be ſaid to be added to cruelty, had been adopted by the Greeks, in conſequence of the ſame cauſes which had concurred to produce the irregularity of their criminal Juſtice. And the ſame practice continues, in theſe days, to prevail on the Continent of Europe, in conſequence of that general arrangement of things, which creates there ſuch a careleſſneſs about remedying the abuſes of public Authority.

But the nature of that ſame Government which has procured to the People of England all the advantages we have before deſcribed, has, with ſtill more reaſon, freed them from the moſt oppreſſive abuſes which prevail in other countries.

(*a*) Cæſar expreſsly reproaches the Greeks with this fact, in his ſpeech in favour of the accomplices of Catiline, which Salluſt has tranſmitted to us.——*Sed eodem illo tempore, Græciæ morem imitati,* (Majores noſtri) *verberibus animadvertebant in civeis, de condemnatis ultimum ſupplicium ſumptum.*

That wantonneſs in diſpoſing of the deareſt rights of Mankind, thoſe inſults upon human Nature, of which the frame of the Governments eſtabliſhed in other States, unavoidably becomes more or leſs productive, are entirely baniſhed from a Nation which has the happineſs of having its intereſts taken care of, by Men who continue to be themſelves expoſed to the preſſure of thoſe laws which they concur in making, and of every tyrannic practice which they ſuffer to be introduced,— by Men whom the advantages which they poſſeſs above the reſt of the People, render only more expoſed to the abuſes they are appointed to prevent, only more alive to the dangers againſt which it is their duty to defend the Community.

Hence we ſee that the uſe of Torture has, from the earlieſt times, been utterly unknown in England. And all attempts to introduce it, whatever might be the power of thoſe who made them, or the circumſtances in which they renewed their endeavours, have been ſtrenuouſly oppoſed, and defeated (*a*).

(*a*) The Reader may on this ſubject ſee again the Note in page 181 of this Work, where the oppoſition is mentioned, that was made to the Earl of Suffolk, and the Duke of Exeter, when they attempted to introduce the practice of Torture: this even was one

Hence alſo aroſe that remarkable forbearance in the Engliſh Laws, to uſe any cruel ſeverity in the puniſhments which experience ſhewed it was neceſſary for the preſervation of Society to eſtabliſh: and the utmoſt vengeance of theſe laws, even againſt the moſt enormous Offenders, never extends beyond the ſimple deprivation of life *(a)*.

Nay, ſo anxious has the Engliſh Legiſlature been to eſtabliſh mercy, even to convicted Offenders, as a fundamental principle of the Government of England, that they made

of the cauſes for which the latter was afterwards impeached. ——— The Reader is alſo referred to the Note which follows which has juſt been quoted, in which the ſolemn declaration is related which the Judges gave againſt the practice of Torture, in the caſe of Felton, who had aſſaſſinated the Duke of Buckingham.

(a) A very ſingular inſtance occurs in the Hiſtory of the year 1605, of the care of the Engliſh Legiſlature not to ſuffer precedents of cruel practices to be introduced. During the time that thoſe concerned in the Gun-powder plot were under ſentence of death, a motion was made in the Houſe of Commons to petition the King,— that the execution might be ſtaid, in order to conſider of ſome extraordinary puniſhment to be inflicted upon them: but this motion was rejected. A propoſal of the ſame kind was alſo made in the Houſe of Lords, where it was dropped.—See the Parliamentary Hiſtory of England, vol. v. anno 1605.

it an expreſs article of that great public Compact, which was framed at the important æra of the Revolution, that "no cruel and unuſual puniſhments ſhould be uſed *(a)*."—They even endeavoured, by adding a clauſe for that purpoſe to the Oath which Kings were thenceforwards to take at their Coronation, as it were to render it an everlaſting obligation of Engliſh Kings, to make Juſtice to be "executed with mercy *(b)*."

(*a*) See the Bill of Rights, Art. x.—"Exceſſive bail ought not to be required, nor exceſſive fines impoſed; nor cruel and unuſual puniſhments inflicted."

(b) Thoſe ſame diſpoſitions of the Engliſh Legiſlature, which have led them to take ſuch precautions in favour even of convicted offenders, have ſtill more engaged them to make proviſions in favour of ſuch perſons as are only ſuſpected and accuſed of having committed offences of any kind, Hence the zeal with which they have availed themſelves of every important occaſion, ſuch, for inſtance, as that of the Revolution, to procure new confirmations to be given to the inſtitution of the Trial by Jury, to the laws on impriſonments, and in general to that ſyſtem of criminal Juriſprudence, of which a deſcription has been given in the firſt part of this Work, to which I refer the Reader.

CHAP. XVII.

A more inward View of the Engliſh Government than has hitherto been offered to the Reader.—Total difference between the Engliſh Monarchy, as a Monarchy, and all thoſe with which we are acquainted.

THE Doctrine conſtantly maintained in this Work (and which has, I think, been ſufficiently ſupported by facts and compariſons drawn from the Hiſtory of other Countries) is, that the remarkable liberty enjoyed by the Engliſh Nation, is eſſentially owing to the impoſſibility under which their Leaders, or in general all Men of power among them, are placed, of invading and transferring to themſelves any branch of the Executive authority; which authority is excluſively veſted, and firmly ſecured, in the Crown. Hence the anxious care with which thoſe Men continue to watch the exerciſe of that authority. Hence their perſeverance in obſerving every kind of engagement which themſelves may have enterered into with the reſt of the People.

But here a conſideration of a moſt imporportant kind preſents itſelf.—How comes the

Crown, in England, thus conſtantly to preſerve to itſelf (as we ſee it does) the whole Executive authority in the State, and moreover to inſpire the great Men in the Nation with that conduct ſo advantageous to public Liberty, which has juſt been mentioned? All theſe are effects which we do not find, upon examination, that the power of *Crowns* has hitherto been able to produce in other Countries.

In all States of a Monarchical form, we indeed ſee that thoſe Men whom their wealth, or their perſonal power of any kind, have raiſed above the reſt of the people, have formed combinations among themſelves to oppoſe the power of the Monarch. But their views, we muſt obſerve, in forming theſe combinations, were not by any means to ſet general and impartial limitations to the Sovereign authority. They endeavoured to render themſelves entirely independent of that authority; or even utterly to annihilate it, according to circumſtances.

Thus we ſee that in all the States of ancient Greece, the Kings were at laſt deſtroyed and exterminated. The ſame events happened in Italy, where in remote times there exiſted for a while ſeveral kingdoms, as we learn both from the ancient Hiſtorians, and the

Poets. And in Rome, we even know the manner in which ſuch a revolution was brought about.

In more modern times, we ſee the numerous Monarchical Sovereignties which had been raiſed in Italy on the ruins of the Roman Empire, to have been ſucceſſively deſtroyed by powerful factions; and circumſtances of much the ſame nature have at different times taken place in the Kingdoms eſtabliſhed in the other parts of Europe.

In Sweden, Denmark, and Poland, for inſtance, we find that the *Nobles* have commonly reduced their Sovereigns to the condition of ſimple Preſidents over their Aſſemblies,—of mere oſtenſible Heads of the Government.

In Germany, and in France, Countries where the Monarchs being poſſeſſed of conſiderable demeſnes, were better able to maintain their power than the Princes juſt mentioned, the Nobles waged war againſt them ſometimes ſingly, and ſometimes jointly; and events ſimilar to theſe have ſucceſſively happened in Scotland, Spain, and the modern Kingdoms of Italy.

In fine, it has only been by means of ſtanding forces that the Sovereigns of moſt of the

the Kingdoms we have mentioned, have been able in a courſe of time to aſſert the prerogatives of their Crown. And it is only by continuing to keep up ſuch forces, that, like the Eaſtern Monarchs, and indeed like all the Monarchs that ever exiſted, they continue to be able to ſupport their authority.

How therefore can the Crown of England, without the aſſiſtance of any armed force, maintain, as it does, its numerous prerogatives? how can it, under ſuch circumſtances, preſerve to itſelf the whole Executive power in the State? For here we muſt obſerve, the Crown in England does not derive any ſupport from what regular forces it has at its diſpoſal; and if we doubted this fact, we need only look to the aſtoniſhing ſubordination in which the military is kept to the civil power, to become convinced that the Engliſh King is not indebted to his army for the preſervation of his authority *(a)*.

If we could ſuppoſe that the armies of the Kings of Spain, or of France, for inſtance, were, through ſome very extraordinary circumſtance, all to vaniſh in one night, the power of thoſe Sovereigns, we muſt not doubt, would, ere ſix months, be reduced to a mere ſhadow.

(a) Henry VIII. kept no ſtanding army.

They would immediately behold their prerogatives (however formidable they may be at preſent) invaded and diſmembered *(a)*: and ſuppoſing that regular Governments continued to exiſt, they would be reduced to have little more influence in them, than the Doges of Venice, or of Genoa, poſſeſs in the Governments of thoſe Republics *(b)*.

How, therefore, to repeat the queſtion once more, which is one of the moſt intereſting that can occur in politics, how can the Crown in England, without the aſſiſtance of any armed force, avoid thoſe dangers to which all other Sovereigns are expoſed?

How can it, without any ſuch force, accompliſh even incomparably greater works than thoſe Sovereigns, with their powerful armies, are, we find, in a condition to perform?— How can it bear that univerſal effort (unknown in other Monarchies) which, we have ſeen, is continually and openly exerted againſt it? How can it even continue to reſiſt it ſo powerfully as to preclude all individuals whatever, from ever entertaining any views beſides

(*a*) As was the caſe in the ſeveral Kingdoms into which the Spaniſh Monarchy was formerly divided; and, in not very remote times, in France itſelf.

(*b*) Or than the Kings of Sweden were allowed to enjoy, before the laſt Revolution in that Country.

thoſe of ſetting juſt and general limitations to the exerciſe of its authority? How can it enforce the laws upon all Subjects, indifferently, without injury or danger to itſelf? How can it, in fine, impreſs the minds of all the great Men in the State with ſuch a laſting jealouſy of its power, as to neceſſitate them, even in the exerciſe of their undoubted rights and privileges, to continue to court and deſerve the affection of the reſt of the People?

Thoſe great Men, I ſhall anſwer, who even in quiet times prove ſo formidable to other Monarchs, are in England divided into two Aſſemblies; and ſuch, it is neceſſary to add, are the principles upon which this diviſion is made, that from it reſults, as a neceſſary conſequence, the ſolidity and indiviſibility of the power of the Crown.

The Reader may perceive that I have led him, in the courſe of this Work, much beyond the line within which Writers on the ſubject of Government have confined themſelves; or rather, that I have followed a track entirely different from that which thoſe Writers have purſued. But as the obſervation juſt made on the ſtability of the power of the Crown in England, and the cauſe of it, is new in its kind, ſo do the principles from which its truth is to be demonſtrated, totally differ from what

is commonly looked upon as the foundation of the ſcience of Politics. To lay theſe principles here before the Reader, in a manner completely ſatisfactory to him, would lead us into philoſophical diſcuſſions on what really conſtitutes the baſis of Governments and Power amongſt Mankind, both extremely long, and in a great meaſure foreign to the ſubject of this book. I ſhall therefore content myſelf with proving the above obſervations by facts; which is more, after all, than political Writers uſually undertake to do with regard to their ſpeculations.

As I chiefly propoſed to ſhew how the extenſive liberty the Engliſh enjoy, is the reſult of the peculiar frame of their Government, and occaſionally to compare the ſame with the Republican form, I even had at firſt intended to confine myſelf to that circumſtance, which both conſtitutes the eſſential difference between thoſe two forms of Government, and is the immediate cauſe of Engliſh liberty; I mean the having placed all the executive authority in the State out of the hands of thoſe in whom the People truſt. With regard to the remote cauſe of that ſame liberty, that is to ſay, the ſtability of the power of the Crown by which this executive authority is ſo ſecured, I ſhould perhaps have been ſilent, had

I not found it abſolutely neceſſary to mention it here, in order to obviate the objections which the more reflecting part of my Readers might otherwiſe have made, both to ſeveral of the obſervations before offered to them, and to a few others which are ſoon to follow.

Beſides, I ſhall confeſs here, I have been ſeveral times under apprehenſions, in the courſe of this Work, leſt the generality of my Readers, miſled by the ſimiliarity of names, ſhould put a too extenſive conſtruction upon what I ſaid with regard to the uſefulneſs of the power of the Crown in England;—leſt they ſhould think, for inſtance, that I attributed the ſuperior advantages of the Engliſh mode of Government over the Republican form, merely to its approaching nearer to the nature of the Monarchies eſtabliſhed in the other parts of Europe, and that I looked upon every kind of Monarchy, as being in itſelf preferable to a Republican Government: an opinion, which I do not by any means or in any degree entertertain; I have too much affection, or, if you pleaſe, prepoſſeſſion, in favour of that form of Government under which I was born; and as I am ſenſible of its defects, ſo do I know how to ſet a value upon the advantages by which it compenſates for them.

I therefore have, as it were, made haſte to avail myſelf of the firſt opportunity of explaining my meaning on this ſubject,—of indicating that the power of the Crown in England ſtands upon foundations entirely different from thoſe on which the ſame Power reſts in other Countries,—and of engaging the Reader to obſerve (which for the preſent will ſuffice) that as the Engliſh Monarchy differs in its nature from every other, ſo all that is ſaid here of its advantages, is peculiar and confined to it.

But to come to the proofs of the ſolidity accruing to the power of the Crown in England, from the co-exiſtence of the two Aſſemblies which concur to form the Engliſh Parliament, I ſhall firſt point out to the Reader ſeveral open Acts of theſe two Houſes, by which they have by turns effectually defeated the attacks of each other upon its prerogatives.

Without looking farther back for examples than the reign of Charles the Second, we ſee that the Houſe of Commons had, in that reign, begun to adopt the method of adding (for tacking, as it is commonly expreſſed) ſuch bills as they wanted more particularly

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to have paſſed, to their money bills. This forcible uſe they made of their undoubted privilege of granting money, would, if ſuffered to grow into common practice, have totally deſtroyed the æquilibrium that ought to ſubſiſt between them and the Crown. But the Lords took upon themſelves the taſk of maintaining that æquilibrium: they complained with great warmth of the ſeveral precedents that were made by the Commons, of the practice we mention: they inſiſted that Bills ſhould be framed "in the old and decent way "of Parliament;" and at laſt have made it a ſtanding order of the Houſe, to reject, upon the ſight of them, all bills that are tacked to money bills.

Again, about the thirty-firſt year of the ſame reign, a ſtrong party prevailed in the Houſe of Commons; and their efforts were not entirely confined, if we may credit the Hiſtorians of thoſe times, to ſerving their Conſtituents faithfully, and providing for the welfare of the State. Among other bills which they propoſed in their Houſe, they carried one to exclude from the Crown the immediate Heir to it: an affair this, of a very high nature, and with regard to which it may well be queſtioned whether the legiſlative Aſſemblies have a right to form a reſolution, with-

out the expreſs and declared concurrence of the body of the People. But both the Crown and the Nation were delivered from the danger of eſtabliſhing ſuch a precedent, by the interpoſition of the Lords, who threw out the bill on the firſt reading.

In the reign of King William the Third, a few years after the Revolution, attacks were made upon the Crown from another quarter. A ſtrong party was formed in the Houſe of Lords; and as we may ſee in Biſhop Burnet's Hiſtory of his Own Times, they entertained very deep deſigns. One of their views, among others, was to abridge the prerogative of the Crown of calling Parliaments, and judging of the proper times of doing it (*a*). They accordingly framed and carried in their Houſe a bill for aſcertaining the ſitting of

(*a*) They, beſides, propoſed to have all money bills ſtopped in their Houſe, till they had procured the right of taxing, themſelves, their own eſtates; and to have a Committee of Lords and Commons appointed to confer together concerning the State of the Nation; "which Committee," ſays Biſhop Burnet, "would ſoon have grown to have been a Council of State, that would have brought all affairs under their inſpection, and never had been propoſed but when the Nation was ready to break into civil wars."—See Burnet's Hiſtory, anno 1693.

Parliament every year: but the bill, after it had paſſed in their Houſe, was rejected by the Commons *(a)*.

Again, we find, a little after the acceſſion of King George the Firſt, an attempt was alſo made by a party in the Houſe of Lords, to wreſt from the Crown a prerogative which is one of its fineſt flowers; and is, beſides, the only check it has on the dangerous views which that Houſe (which may ſtop both money bills and all other bills) might be brought to entertain; I mean the right of adding new members to it, and judging of the times when it may be neceſſary to do ſo. A bill was accordingly preſented, and carried, in the Houſe of Lords, for limiting the members of that Houſe to a fixed number, beyond which it ſhould not be increaſed; but after great pains taken to enſure the ſucceſs of this bill, it was at laſt rejected by the Houſe of Commons.

In fine, the ſeveral attempts which a majority in the Houſe of Commons have in their turn made to reſtrain, farther than it now is, the influence of the Crown ariſing from the diſtribution of preferments and other advantages, have been checked by the Houſe of

(*a*) Nov. 28, 1693.

Lords; and all place-bills have, from the beginning of this Century, conſtantly miſcarried in that Houſe.

Nor have theſe two powerful Aſſemblies only ſucceeded thus in warding off the open attacks of each other, on the power of the Crown. Their co-exiſtence, and the principles upon which they are ſeverally framed, have been productive of another effect much more extenſive, though at firſt leſs attended to, I mean the preventing even the making of ſuch attacks; and in times too, when the Crown was of itſelf incapable of defending its authority: the views of each of theſe two Houſes, deſtroying, upon theſe occaſions, the oppoſite views of the other; like thoſe poſitive and negative equal quantities, (if I may be allowed the compariſon) which deſtroy each other on the oppoſite ſides of an equation.

Of this we have ſeveral remarkable examples; as for inſtance, when the Sovereign has been a minor. If we examine the Hiſtory of other Nations, we ſhall find that that event has conſtantly been attended with open invaſions of the Royal authority, or ſometimes with complete and ſettled diviſions of it. In England, on the contrary, whether we look at the reign of Richard II. or that of Henry VI. or of Edward VI. we ſhall ſee that the Royal

authority has been quietly exerciſed by the Councils that were appointed to aſſiſt thoſe Princes; and when they came of age, the ſame has been delivered over to them undiminiſhed.

But nothing ſo remarkable can be alledged on this ſubject, as the manner in which theſe two Houſes have acted upon thoſe occaſions, when the Crown being without any preſent poſſeſſor, they had it in their power, both to ſettle it on what perſon they pleaſed, and to divide and diſtribute its prerogatives as they might have thought proper. Circumſtances of this kind have never failed, in other Kingdoms, to bring on a diviſion of the authority of the Crown, or even the State itſelf. In Sweden, for inſtance (to ſpeak of that kingdom which has borne the greateſt outward reſemblance to that of England), when Queen Chriſtina was put under a neceſſity of abdicating the Crown, and it was transferred to the Prince who ſtood next to her in the line of Succeſſion, the Executive authority in the State was immediately divided, and either diſtributed among the Nobles, or aſſigned to the Senate, into which the Nobles alone could be admitted; and the new King was only to be a Preſident over it.

After the death of Charles the Twelfth, who died without male heirs, the diſpoſal of the Crown (the power of which Charles the Eleventh had found means to render again abſolute) returned to the States, and was ſettled on the Princeſs Ulrica, and the Prince her Huſband. But the Senate, at the ſame time it thus ſettled the poſſeſſion of the Crown, again aſſumed to itſelf the authority which formerly belonged to it: the power of aſſembling the States, of making war and peace, and treaties with foreign powers, the diſpoſal of places, the adminiſtration of the public revenue, the command of the army and of the fleet, were veſted in that Body. Their number was to conſiſt of ſixteen members. The majority of votes was to be deciſive upon all occaſions. The only privilege of the new King, was to have his vote reckoned for two: and if on any occaſions he ſhould refuſe to attend their meetings, the buſineſs was nevertheleſs to be done as effectually and definitively without him.

But in England, the Revolution of the year 1689 was terminated in a manner totally different. Indeed, thoſe prerogatives deſtructive of public liberty, which the late King had aſſumed, were retrenched from the Crown; and thus far the two Houſes agreed: but as to proceeding to transfer to other hands any part

of the authority of the Crown, no propoſal was even made about it. Thoſe prerogatives which were taken from the Crown, were annihilated and made to ceaſe to exiſt in the State; and all the Executive authority that was thought neceſſary to be continued in the Government, was, as before, left undivided in the Crown *(a)*.

(a) This remarkable circumſtance of the power of the Crown in England being conſtantly preſerved undivided, whatever Revolutions may have ariſen, throws a farther light on the obſervation before made, and about which I have referred to this place to ſay a few words more, concerning the advantageous manner to public liberty in which Revolutions have always been terminated in England. In other limited Monarchies, the Men who were at the head of the Nation, finding it in their power, upon thoſe occaſions, to aſſume to themſelves the exerciſe of the Sovereign Authority, conſtantly did ſo, and as conſtantly left that authority in the ſame undefined extent as before; juſt as we have ſeen that it always happened in the ancient Commonwealths, and from the very ſame reaſons. But in England, each Member in each Houſe of Parliament, ſeeing, on the occaſions we mention, that the Executive authority muſt, in the iſſue, fall ſomewhere undivided, and continue ſo, and that neither perſonal advantages of any kind, nor the power of any faction, but the law alone, could afterwards be a reſtraint upon its actions, ſeriouſly applied themſelves to frame with care thoſe laws on which their own liberty was afterwards to depend, and to limit that Power which they ſaw they could neither transfer to themſelves and their party, nor render themſelves independent of.

In the ſame manner was the whole authority of the Crown transferred afterwards to the Princeſs who ſucceeded King William the Third, and who had no other claim to it, but what was conferred on her by Parliament. And in the ſame manner again it was ſettled, a long time beforehand, on the Princes of Hanover who have ſince ſucceeded her (*a*).

It will not be improper to add here, as a farther proof of the indiviſibility of the power of the Crown (which has been above ſaid to reſult from the peculiar frame of the Engliſh Parliament) that no part of the Executive authority of the King is veſted in his Privy Council, as we have ſeen it was in the Senate of Sweden: all centers in the Sovereign; the votes of the members are not even counted, if I am well informed: and in fact the conſtant ſtyle of the Law, is the King *in* Council, and not the King *and* Council. A proviſo is indeed ſometimes added to ſome bills, that certain acts mentioned in them are to be tranſacted by the King in his Council: but this is only a precaution taken in the view that the moſt important affairs of a great Nation may be tranſacted with proper ſolemnity, and to prevent, for inſtance, all objections that might, in proceſs of time, be drawn from the uncertainty whether the King had aſſented, or not, to certain particular tranſactions.

(*a*) If the Reader wanted a farther confirmation as to the peculiarity of the conduct of the Engliſh Parliament, in preſerving the authority of the Crown undivided, though the latter lay, as it were, at their diſpoſal, he need only compare the Acts by which they ſettled it on the Houſe of Hanover with that framed for the ſame purpoſe by the Scotch Parliament, a few years before the Union,

Nay, one moſt extraordinary fact, and to which I deſire the Reader to give his attention—Notwithſtanding all the Revolutions we mention, and though Parliament has ſat every year ſince the beginning of this century, and though they have conſtantly enjoyed the moſt unlimited freedom, both as to the ſubjects and the manner of their deliberations, and numberleſs propoſals have in conſequence been made—yet ſuch has been the efficiency of each Houſe, in deſtroying, preventing, or qualifying, the views of the other, that the Crown has not been obliged during all that time to make uſe, even once, of its negative voice; and the laſt Bill, rejected by a King of England, has been that rejected by King William the Third in the year 1692, for Triennial Parliaments *(a)*.

By this latter Act the Power of the Crown in Scotland was to be diſmembered, in much the ſame manner as we have ſeen it was in Sweden.—*See Parliamentary Debates*, vol. iii.

(*a*) He aſſented a few years afterwards to that Bill, after ſeveral amendments had been made in it.

The obſervation above made on the conſtant tenour of the proceedings of the Engliſh Parliament, with relation to the Crown, is rendered ſtill more remarkable when we conſider the events which have of late years taken place in France; and when we ſee the late King to have at laſt taken a moſt ſerious alarm at the proceedings of his Parliament of Paris, (an Aſſembly which is

And this peculiar ſecurity of the Executive authority of the Crown in England, has not only freed the State from thoſe diſturbances to which other Monarchies were unavoidably expoſed before the uſe of ſtanding armies, and enabled it to produce all thoſe advantageous effects to public liberty, which we have mentioned in the courſe of this Work; but this ſame ſecurity has alſo procured to England,

far from having the ſame importance in the Kingdom of France, as the Engliſh Parliament has in England) and to have in the end applied to his army in order to diſperſe it. And though the preſent King of France has thought proper to re-eſtabliſh that Parliament, a meaſure which was highly prudent in the beginning of his reign, yet every precaution has at the ſame time been taken to render it dumb for ever.

To theſe obſervations on the ſecurity of the power of the Crown, another of great importance is to be added, which is alſo founded upon facts, and which Theory would equally juſtify: this is, that the Crown cannot depend upon the ſecurity we mention, any longer than it continues to fulfil its engagements with the Parliament, and with the Nation; of this the misfortunes of Charles the Firſt, and the Revolution of the year 1689, are convincing as well as awful proofs. And in general the imminent dangers and perplexities in which the Kings of England have conſtantly involved themſelves whenever they have attempted to ſtep beyond the limits of the law, manifeſtly ſhow, that all that can be ſaid of the greatneſs and ſecurity of their power is to be underſtood, not of the capricious power of the Man, but of the lawful authority of the Head of the State.

conſidered as a free State, other advantages which would really have been totally unattainable in the other free States before mentioned, whatever degree of public virtue we might even ſuppoſe to have belonged to thoſe who acted in them as the Leaders of the People.

The one is the extraordinary freedom which the People of England enjoy at the expence of the governing authority. In the Roman Commonwealth, for inſtance, we ſee the Senate to have been veſted with a number of powers totally deſtructive of the liberty of the Citizens; and the continuance of theſe powers, was, no doubt, in a great meaſure owing to the treacherous remiſſneſs of thoſe Men in whom the People truſted for repreſſing them, or even to their determined reſolution not to abridge thoſe prerogatives. Yet, if we attentively conſider the conſtant ſituation of affairs in that Republic, we ſhall find, that though we might ſuppoſe theſe perſons to have been ever ſo truly attached to the cauſe of the people, it would not really have been poſſible for them to procure to the People an entire ſecurity. The right enjoyed by the Senate, of ſuddenly naming a Dictator, with a power unreſtrained by any law, or of inveſting the Conſuls with an authority of much the ſame kind, and the power it aſſumed of making at times formid-

able examples of arbitrary Juſtice, were reſources of which the Republic could not, perhaps, with ſafety have been totally deprived; and though theſe were for the moſt part uſed to deſtroy the juſt liberty of the People, yet they were alſo very often the means of preſerving the Commonwealth.

Upon the ſame principle we ſhould poſſibly find that the *Oſtraciſm*, that arbitrary method of baniſhing Citizens, was a neceſſary reſource in the Republic of Athens. A Venetian Noble would perhaps alſo confeſs, that however terrible the State Inquiſition eſtabliſhed in his Republic may be, even to the Nobles themſelves, yet it would not be prudent entirely to aboliſh it. And we do not know but a Miniſter of State in France, though we might ſuppoſe him ever ſo virtuous and moderate a Man, would ſay the ſame with regard to the ſecret impriſonments, the *lettres de cachet*, and other arbitrary deviations from the ſettled courſe of law, which often take place in that Kingdom, and in the other Monarchies of Europe. No doubt, if he was the Man we ſuppoſe, he would confeſs the expedients we mention have in numberleſs inſtances been moſt horribly proſtituted to gratify the wantonneſs and private revenge of Miniſters, or of thoſe who had any intereſt

with them; but ſtill perhaps he would continue to give it as his opinion, that the Crown, notwithſtanding its apparently immenſe ſtrength, cannot avoid recurring at times to expedients of this kind; much leſs could it publicly and abſolutely renounce them.

It is therefore a moſt advantageous circumſtance in the Engliſh Government, that its ſecurity renders all ſuch expedients unneceſſary; and that the Repreſentatives of the People have not only been conſtantly willing to promote the public liberty, but that the general ſituation of affairs has alſo enabled them to carry their precautions ſo far as they have done. And indeed, when we conſider what prerogatives the Crown, in England, has ſincerely renounced—that in conſequence of the independence conferred on the Judges and of the method of *Trial by Jury*, it is deprived of all means of influencing the ſettled courſe of the law both in civil and criminal matters—that it has renounced all power of ſeizing the property of individuals, and even of reſtraining in any manner whatſoever, and for the ſhorteſt time, the liberty of their perſons, we do not know what we ought moſt to admire, whether the public virtue of thoſe who have deprived the ſupreme Executive Power of all thoſe dan-

gerous prerogatives, or the nature of that ſame Power, which has enabled it to give them up without ruin to itſelf—whether the happy frame of the Engliſh Government, which makes thoſe in whom the People truſt, continue ſo faithful in the diſcharge of their duty, or the ſolidity of that ſame Government, which really can afford to leave to the People ſuch an extenſive degree of freedom.

Again, the Liberty of the preſs, that great advantage enjoyed by the Engliſh Nation, does not exiſt in any of the other Monarchies of Europe, however well eſtabliſhed their power may at firſt ſeem to be; and it might even be demonſtrated that it cannot exiſt in them. The moſt watchful eye, we ſee, is conſtantly kept in thoſe Monarchies upon every kind of publication; and a jealous attention is paid even to the looſe and idle ſpeeches of individuals. Much unneceſſary trouble (we may be apt at firſt to think) is taken upon this ſubject; but yet if we conſider how uniform the conduct of all thoſe Governments is, how conſtant and unremitted their cares are in thoſe reſpects, we ſhall become convinced, without looking farther, that there muſt be ſome neceſſity for their precautions.

In Republican States, for reaſons which are at the bottom as in the before-mentioned Governments, the People are alſo kept under the greateſt reſtraints by thoſe who are at the head of the State. In the Roman Commonwealth, for inſtance, the liberty of writing was curbed by the ſevereſt laws *(a)*: with regard to the freedom of ſpeech, things were but little better, as we may conclude from ſeveral facts; and many inſtances may even be produced of the dread with which the private Citizens, upon certain occaſions, communicated their political opinions to the Conſuls, or to the Senate. In the Venetian Republic, the preſs is moſt ſtrictly watched: nay, to forbear to ſpeak in any manner whatſoever, on the conduct of the Government, is the fundamental maxim which they inculcate on the minds of the People throughout their dominions *(b)*.

(a) The Law of the Twelve Tables had eſtabliſhed the puniſhment of death againſt the author of a Libel: nor was it by a *Trial by Jury* that they determined what was to be called a Libel. SI QUIS CARMEN OCCENTASSIT, ACTITASSIT, CONDIDISSIT, QUOD LATERI FLAGITIUM FAXIT, CAPITAL ESTO.

(b) Of this I have myſelf ſeen a proof ſomewhat ſingular, which I beg leave of the Reader to relate. Being, in the year 1768, at Bergamo, the firſt Town of the Venetian State, as you come into it from the State

With reſpect therefore to this point, it may again be looked upon as a moſt advantageous circumſtance in the Engliſh Government, that thoſe who have been at the head of the People, have not only been conſtantly diſpoſed to procure the liberty of the People, but alſo that they have found it poſſible for them to do ſo; and that the ſtability of the Government has admitted of that extenſive freedom of ſpeaking and writing which the

of Milan, I took a walk in the evening in the neighbourhood of the Town; and wanting to know the name of ſeveral places which I ſaw at a diſtance, I ſtopped a young Countryman to aſk him information. Finding him to be a ſenſible young Man, I entered into ſome farther converſation with him; and as he had himſelf a great inclination to ſee Venice, he aſked me, whether I propoſed to go there? I anſwered, that I did: on which he immediately warned me when I was at Venice not to ſpeak of the Prince (*del Principe*) an appellation aſſumed by the Venetian Government, in order, as I ſuppoſe, to convey to the People a greater idea of their union among themſelves. As I wanted to hear him talk farther on the ſubject, I pretended to be entirely ignorant in that reſpect, and aſked for what reaſon I muſt not ſpeak of the Prince? But he, (after the manner of the common People in Italy, who, when ſtrongly affected by any thing, rather chuſe to expreſs themſelves by ſome vehement geſture, than by words) ran the edge of his hand, with great quickneſs, along his neck, meaning thereby to expreſs, that being ſtrangled, or having one's throat cut, was the inſtant conſequence of taking ſuch a liberty.

People of England enjoy. A moſt advantageous privilege, this; which affording to every Man a means of laying his complaints before the Public, procures him almoſt a certainty of redreſs againſt any act of oppreſſion that he may have been expoſed to: and which leaving, moreover, to every Subject a right to give his opinion on all public matters, and by thus influencing the ſentiments of the Nation, to influence thoſe of the Legiſlature itſelf (which is ſooner or later obliged to pay a deference to them), procures to him a ſort of Legiſlative authority of a much more efficacious and beneficial nature than any formal right he might enjoy of voting by a mere *yea* or *nay*, upon general propoſitions ſuddenly offered to him, and which he could have neither a ſhare in framing, nor any opportunity of objecting to, and modifying.

A privilege which, by raiſing in the People a continual ſenſe of their own ſecurity, and affording them undoubted proofs that the Government, whatever may be its form, is ultimately deſtined to inſure the happineſs of thoſe who live under it, is both one of the greateſt advantages of Freedom, and its ſureſt characteriſtic. The kind of ſecurity as to their perſons and poſſeſſions, which Subjects who are totally deprived of that privilege, enjoy

at particular times, under other Governments, perhaps may intitle them to look upon themſelves as the well adminiſtered property of Maſters who rightly underſtand their own intereſts; but it is the right of canvaſſing without fear the conduct of thoſe who are placed at their head, which conſtitutes a free Nation *(a)*.

In fine, what completes all thoſe advantages which reſult from the ſecurity of the ſupreme Executive authority in England, is the nature of the means by which this ſecurity is obtained: means which are totally different from thoſe by which the ſame advantage is ſo incompletely procured, and ſo dearly paid for, in other Monarchies; and which have equally preſerved the Engliſh from the two oppoſite calamities, of anarchy dignified with the name of liberty, and of total political ſlavery, dignified with the name of public tranquility.

It is from a happy general arrangement of things, that the Power which governs in Eng-

(a) If we conſider the great advantages to public liberty which reſult from the inſtitution of the Trial by Jury, and from the Liberty of the Preſs, we ſhall find England to be in reality a more Democratical State than any other we are acquainted with. The Judicial power, and the Cenſorial power, are veſted in the People.

land, derives that advantageous ſolidity which procures to the People both ſo great a degree of ſecurity, and ſo extenſive a degree of freedom. It is from the Nation itſelf that it receives the force with which it governs the Nation. Its ſupport is harmony, and not violence—conſent, and not terror; and it continues to reign through the voluntary paſſions of thoſe who are ſubject to it.

CHAP. XVIII.

How far the examples of Nations that have loſt their liberty, are applicable to England.

ALL Governments having in themſelves, ſay thoſe who have written upon that ſubject, the principle of their deſtruction (a principle inherent in thoſe very cauſes to which they owed their proſperity), the advantages of the Government of England cannot, according to theſe Writers, exempt it from that hidden fault which is ſecretly working its ruin; and M. de Monteſquieu, pronouncing at the ſame time, both concerning the effect, and the cauſe, ſays, that "the Conſtitution of Eng-"land will loſe its liberty,—will periſh.

"Have not Rome, Lacedæmon, and Car-
"thage, periſhed? It will periſh when the
"Legiſlative power ſhall have become more
"corrupt than the Executive."

Though I do by no means pretend that any human eſtabliſhment can eſcape the fate to which we ſee every thing in Nature is ſubject, nor am ſo far prejudiced by the ſenſe I entertain of the great advantages of the Engliſh Government, as to reckon among them that of eternity, I will however obſerve in general, that, as it differs by its ſtructure and reſources from all thoſe with which Hiſtory makes us acquainted, ſo it cannot be ſaid to be liable to the ſame dangers. To judge of the one from the other, is to judge by analogy, where no anology is to be found; and my reſpect for the author I have quoted will not hinder me from ſaying, that his opinion has not the ſame weight with me on this occaſion, that it has on many others.

Having neglected, as indeed all ſyſtematic Writers upon Politics have done, attentively to enquire into the real nature of Governments, of Power, and of Liberty, among Mankind, the principles he lays down are not always ſo clear, or even ſo juſt, as we might

have expected from a Man of ſo real a genius. When he ſpeaks of England, for inſtance, his obſervations are much too general; and though he had frequent opportunities of converſing with Men who had been perſonally concerned in the public affairs of this Country, and had been himſelf an eye-witneſs of the operations of the Engliſh Government, yet, when he attempts to deſcribe it, he rather tells us what he conjectured than what he ſaw.

The examples he cites, and the cauſes of diſſolution which he aſſigns, particularly confirm this obſervation. The Government of Rome, to ſpeak of that which, having gradually, and as it were of itſelf, fallen to ruin, may afford matter for exact reaſoning, had no relation to that of England. The Roman People were not, in the latter ages of the Commonwealth, a People of Citizens, but of Conquerors. Rome was not a State, but the head of a State. By the immenſity of its conqueſts, it came in time to be in a manner only an acceſſory part of its own Empire. Its power became ſo great, that after having conferred it, it was at length no longer able to reſume it: and from that moment it became itſelf ſubject to it, from the ſame reaſon that the Provinces themſelves were ſo.

The fall of Rome, therefore, was an event peculiar to its ſituation; and the change of manners which accelerated this fall, had alſo an effect which it could not have had but in that ſame ſituation. Men who had drawn to themſelves all the riches of the World, could no longer content themſelves with the ſupper of Fabricius, and the cottage of Cincinnatus. The People, who were maſters of all the corn of Sicily and Africa, were no longer obliged to plunder their neighbours for their's. All poſſible Enemies, beſides, being exterminated, Rome, whoſe power was military, became to be no longer an army; and that was the æra of her corruption: if, indeed, we ought to give that name to what was the inevitable conſequence of the nature of things.

In a word, Rome was deſtined to loſe her Liberty when ſhe loſt her Empire; and ſhe was deſtined to loſe her empire, whenever ſhe ſhould begin to enjoy it.

But England forms a Society founded upon principles abſolutely different. All liberty, and power, are not accumulated, as it were, in one point, ſo as to leave, every where elſe, only ſlavery and miſery, conſequently only ſeeds of diviſion, and ſecret animoſity. From the one end of the Iſland to the other

the ſame laws take place, and the ſame intereſts prevail: the whole Nation, beſides, equally concurs in the formation of the Government: no part, therefore, has cauſe to fear that the other parts will ſuddenly ſupply the neceſſary forces to deſtroy its liberty; and the whole have, of courſe, no occaſion for thoſe ferocious kinds of virtue which are indiſpenſably neceſſary to thoſe who, from the ſituation in which they have brought themſelves, are continually expoſed to ſuch dangers, and after having invaded every thing, muſt abſtain from every thing.

The ſituation of the People of England, therefore, eſſentially differs from that of the People of Rome. The form of the Engliſh Government does not differ leſs from that of the Roman Republic; and the great advantages it has over the latter for preſerving the liberty of the People from ruin, have been deſcribed at length in the courſe of this Work.

Thus, for inſtance, the total ruin of the Roman Republic was principally brought about by the exorbitant power to which ſeveral of its Citizens were ſucceſſively enabled to riſe. In the latter age of the Commonwealth, thoſe Citizens went ſo far as to divide among themſelves the dominions of the Republic, in much the ſame manner as they might have done lands

of their own. And to them, others in a ſhort time ſucceeded, who not only did the ſame, but who even proceeded to that degree of tyrannical inſolence, as to make ceſſions to each other, by expreſs and formal compacts, of the lives of thouſands of their fellow-Citizens. But the great and conſtant authority and weight of the Crown, in England, prevent, in their very beginning, as we have ſeen, all misfortunes of this kind; and the reader may recollect what has been ſaid before on that ſubject.

At laſt the ruin of the Republic, as every body knows, was completed. One of thoſe powerful Citizens we mentioned, in proceſs of time found means to exterminate all his competitors: he immediately aſſumed to himſelf the whole power of the State; and eſtabliſhed for ever after an arbitrary Monarchy. But ſuch a ſudden and violent eſtabliſhment of a Monarchical power, with all the fatal conſequences that would reſult from ſuch an event, are calamities which cannot take place in England: that ſame kind of power we ſee, is already in being; it is aſcertained by fixed laws, and eſtabliſhed upon regular and well-known foundations.

Nor is there any great danger that that power may, by the means of thoſe legal prero-

gatives it already poſſeſſes, ſuddenly aſſume others, and at laſt openly make itſelf abſolute. The important privilege of granting to the Crown its neceſſary ſupplies, we have before obſerved, is veſted in the Nation: and how extenſive ſoever the prerogatives of a King of England may be, it conſtantly lies in the power of his People either to grant, or deny him, the means of exerciſing them.

This right poſſeſſed by the People of England, conſtitutes the great difference between them, and all the other Nations that live under Monarchical Governments. It likewiſe gives them a great advantage over ſuch as are formed into Republican States, and confers on them a means of influencing the conduct of the Government, not only more effectual but alſo (which is more in point to the ſubject of this Chapter) incomparably more laſting and ſecure, than thoſe reſerved to the People in the States we mention.

In thoſe States, the political rights which uſually fall to the ſhare of the People, are thoſe of voting in general Aſſemblies, either when laws are to be enacted, or Magiſtrates to be elected. But as the advantages ariſing from theſe general rights of giving votes,

never are very clearly aſcertained by the People, ſo neither are the conſequences attending particular forms or modes of giving theſe votes, generally and completely underſtood by them. They in conſequence, never entertain any ſtrong and conſtant preference for one method rather than another; and it hence always proves but too eaſy a thing in Republican States, either by inſidious propoſals made at particular times to the People, or by well-contrived precedents, or other means, firſt to reduce their political privileges to mere ceremonies and forms, and at laſt, entirely to aboliſh them.

Thus, in the Roman Republic, the mode which was conſtantly in uſe for about one hundred and fifty years, of dividing the Citizens into *Centuriæ* when they gave their votes, reduced the right of the greater part of them, during that time, to little more than a ſhadow. After the mode of dividing them by Tribes had been introduced by the Tribunes, the bulk of the Citizens indeed were not, when it was uſed, under ſo great a diſadvantage as before; but yet the great privileges exerciſed by the Magiſtrates in all the public aſſemblies, the power they aſſumed of moving the Citizens out of one

Tribe into another, and a number of other circumſtances, continued to render the rights of the Citizens more and more ineffectual; and in fact we do not find that when thoſe rights were at laſt entirely taken from them, they expreſſed any great degree of diſcontent.

In Sweden (the former Government of which partook much of the Republican form) the right allotted to the People in the Government, was that of ſending Deputies to the General States of the Kingdom, who were to give their votes on the reſolutions that were to be taken in that Aſſembly. But the privilege of the People of ſending ſuch Deputies was, in the firſt place, greatly diminiſhed by ſeveral eſſential diſadvantages under which theſe Deputies were placed with reſpect to the Body, or *Order*, of the Nobles. The ſame privilege of the People was farther leſſened by depriving their Deputies of the right of freely laying their different propoſals before the States, for their aſſent, or diſſent, and attributing the excluſive right of framing ſuch propoſals, to a private Aſſembly which was called the *Secret Committee*. Again, the right allowed to the Order of the Nobles, of having a number of Members in this Secret Committee double to that of all the other Or-

ders taken together, rendered the rights of the People ſtill more ineffectual. At the laſt Revolution thoſe rights we mention, have been in a manner taken from the People; and they do not ſeem to have made any great efforts to preſerve them (*a*).

But the ſituation of affairs in England is totally different from that which we have juſt deſcribed. The political rights of the People are inſeparably connected with the right of Property—with a right which it is as difficult to invalidate by artifice, as it is dangerous to attack it by force, and which we ſee that the moſt arbitrary Kings, in the full career of their power, never have offered to violate without the greateſt precautions. A King of England, who would enſlave his People, muſt begin with doing, for his firſt act, what all other Kings reſerve for the laſt; and he cannot attempt to deprive his Subjects of their political privileges, without declaring war againſt the whole Nation at the ſame time, and attacking

(*a*) I might have produced examples without number, of Republican States in which the People have been brought, at one time or other, to ſubmit to the loſs of their political privileges. In the Venetian Republic, for inſtance, the right, now excluſively veſted in a certain number of families, of enacting laws, and electing the Doge and other Magiſtrates, was originally veſted in the whole People.

every individual at once in his moſt permanent and beſt underſtood intereſt.

And that means poſſeſſed by the People of England, of influencing the conduct of the Government, is not only in a manner ſecure againſt any danger of being taken from them: it is moreover attended with another advantage of the greateſt importance; which is that of conferring naturally, and as it were neceſſarily, on thoſe to whom they truſt the care of their intereſts, the great privilege we have before deſcribed, of debating among themſelves whatever queſtions they think conducive to the good of their Conſtituents, and of framing whatever bills they think proper, and in what terms they chuſe. An eſſential privilege this, which gives them a moſt effectual means of providing for the ſafety of all the other rights of the People, and enables them to check in their beginning all attempts of practices that might be dangerous to public liberty, and even to procure thoſe to be aboliſhed that have already in any manner whatſoever been eſtabliſhed.

How long ſoever the People may have remained in a ſtate of ſupineneſs as to their moſt valuable intereſts, whatever may have been the neglect and even the errors of their Repreſentatives, the inſtant the latter come either

to ſee theſe errors, or to have a ſenſe of their duty, they begin, by means of the privilege we mention, effectually to repair the loſſes of public liberty; they inform both themſelves and the body of the people with reſpect to the main and eſſential objects of their intereſts; they take the neceſſary precautions for preventing thoſe abuſes of which they complain from being continued, and others of the ſame kind from being eſtabliſhed; and the governing Power (whatever dangerous advantages it may at firſt ſight appear to poſſeſs) is thus conſtantly, either confined, or brought back to its ancient limits *(a)*.

And I ſhall take this opportunity to make the Reader obſerve, in general, how the different parts of the Engliſh Government mutually aſſiſt and ſupport each other. It is becauſe the whole Executive authority in the State is veſted in the Crown, that the People may without danger commit the care of their liberty to Repreſentatives:—it is becauſe they ſhare in the Government only through theſe

(a) The Reader may remember that among the Acts of which the Parliament obtained the abolition in the beginning of the reign of Edward VI. that Act was compriſed which had enacted, that the Proclamations of the Crown ſhould have the force of Law. The Parliament who had paſſed that Act, ſeemed to have done at that time, what the Daniſh Nation did a century afterwards.

Repreſentatives, that they are enabled to poſſeſs the great advantage of framing and propoſing new laws: but for this purpoſe, it is again abſolutely neceſſary that the *Crown*, that is to ſay, a *Veto* of extraordinary power, ſhould exiſt in the State.

It is, on the other hand, becauſe the balance of the People is placed in the right of granting to the Crown its neceſſary ſupplies, that the latter may, without danger, be intruſted with the great authority we mention; and that the right, for inſtance, which is veſted in it of judging of the proper time for calling and diſſolving Parliaments (a right abſolutely neceſſary to its preſervation) may exiſt without producing, *ipſo facto*, the ruin of public Liberty. The fineſt Government upon Earth, or rather that which has hitherto been founded upon principles the moſt conſonant with human Nature, was in danger of total deſtruction, when Bartholomew Columbus was on his paſſage to England, to teach Henry the Seventh the way to Mexico and Peru (*a*).

As a concluſion of this ſubject (which might open a field for ſpeculations without end)

(*a*) As affairs are ſituated in England, the diſſolution of a Parliament on the part of the Crown, is no more than an appeal either to the People themſelves, or to another Parliament.

I ſhall take notice of an advantage peculiar to the Engliſh Government, and which, more than any other we could mention, muſt contribute to its duration. All the political paſſions of Mankind, if we attend to it, are ſatisfied and provided for in the Engliſh Government; and whether we look at the Monarchical, or the Ariſtocratical, or the Democratical part of it, we find all thoſe powers already ſettled in it in a regular manner, which have an unavoidable tendency to ariſe, at one time or other, in all human Societies.

If we could for an inſtant ſuppoſe that the Engliſh form of Government, inſtead of having been the effect of a lucky concurrence of fortunate circumſtances, had been eſtabliſhed from a ſettled plan by a Man who had diſcovered, beforehand and by reaſoning, all thoſe advantages reſulting from it which we now perceive from experience, and had undertaken to point them out to other Men capable of judging of what he ſaid to them, the following is, no doubt, the manner in which he would have ſpoken to them.

"Nothing is more chimerical, he would have "ſaid, than a ſtate of either total equality, or "total liberty amongſt Mankind. In all ſocieties "of Men, ſome Power will neceſſarily ariſe. This "Power, after gradually becoming confined to a

" ſmaller number of perſons, will, by a like " neceſſity, at laſt fall into the hands of a ſingle " Leader; and theſe two effects (of which " you may ſee conſtant examples in Hiſtory) " flowing from the ambition of one part of " Mankind, and from the various affections " and paſſions of the other, are abſolutely un- " avoidable.

" Let us, therefore, admit this evil at once, " ſince it is impoſſible to avoid it. Let us, of " ourſelves, eſtabliſh a Chief among us, ſince " we muſt, ſome time or other, ſubmit to one: " we ſhall by this means effectually prevent " the conflicts that would ariſe among the " competitors for that ſtation. But let us, " above all, eſtabliſh him ſingle; leſt, after " ſucceſſively raiſing himſelf on the ruins of " his Rivals, he ſhould finally eſtabliſh him- " ſelf, whether we will or not, and through a " train of the moſt diſadvantageous events.

" Let us even give him every thing we can " poſſibly give without endangering our ſe- " curity. Let us call him our Sovereign; let " us make him conſider the State as being his " own patrimony; let us grant him, in ſhort, " ſuch perſonal privileges as none of us can " ever hope to rival him in, and we ſhall find " that what we were at firſt inclined to conſider " as a great evil, will be in reality a ſource of

" advantages to the Community. We ſhall " be the better able to ſet bounds to that Power " which we ſhall have thus aſcertained and " fixed in one place. We ſhall have the more " intereſted the Man whom we ſhall have put " in poſſeſſion of ſo many advantages, in the " faithful diſcharge of his duty. And we " ſhall have thus procured for each of us, a " powerful protector at home, and for the " whole Community, a defender againſt fo- " reign enemies ſuperior to all poſſible temp- " tation of betraying his Country.

" You may alſo have obſerved, he would " continue, that in all States, there naturally " ariſes around the perſon, or perſons, who are " inveſted with the public power, a claſs of " Men, who, without having any actual ſhare " in that power, yet partake of its luſtre: who, " pretending to be diſtinguiſhed from the reſt " of the Community, do, from that very cir- " cumſtance, become diſtinguiſhed from them: " and this diſtinction, though only matter of " opinion, and at firſt thus ſurreptitiouſly ob- " tained, yet becomes at laſt the ſource of " very grievous effects.

" Let us therefore regulate this evil which " we cannot entirely prevent. Let us eſtabliſh " this claſs of Men, who would otherwiſe grow " up among us without our knowledge, and

" gradually acquire the moſt pernicious privi-
" leges : let us grant them diſtinctions that are
" viſible and clearly aſcertained : their nature
" will, by this means, be the better underſtood,
" and they will of courſe be much leſs likely
" to become dangerous. By this means alſo,
" we ſhall preclude all other perſons from the
" hopes of uſurping them. As to pretend to
" diſtinctions can thenceforward be no longer
" a title to obtain them, every one who ſhall
" not be expreſsly included in their number,
" muſt continue to confeſs himſelf one of the
" People; and juſt as we ſaid before, let us
" chuſe ourſelves one maſter that we may not
" have fifty, ſo let us again ſay on this occa-
" ſion, let us eſtabliſh three hundred Lords,
" that we may not have ten thouſand Nobles.
" Beſides, our pride will better reconcile
" itſelf to a ſuperiority which it will no longer
" think of diſputing. Nay, as they will them-
" ſelves ſee us to be beforehand in acknow-
" ledging it, they will think themſelves under
" no neceſſity of being inſolent to furniſh us a
" proof of it. Secure as to their privileges, all
" violent meaſures on their part for maintain-
" ing, and at laſt perhaps extending them, will
" be prevented : they will never combine to-
" gether with any degree of vehemence, but
" when they really have cauſe to think them-

" ſelves in danger; and by having made them " indiſputably great Men, we ſhall have a " chance of often ſeeing them behave like " modeſt and virtuous Citizens.

" In fine, by being united in a regular Aſ- " ſembly, they will form an intermediate Body " in the State, that is to ſay, a very uſeful part " of the Government.

" It is alſo neceſſary, our Lawgiver would " farther add, that we, the People, ſhould have " an influence upon the Government: it is " neceſſary for our own ſecurity; it is no leſs " neceſſary for the ſecurity of the Govern- " ment itſelf. But experience muſt have " taught you, at the ſame time, that a great " body of Men cannot act, without being, " though they are not aware of it, the inſtru- " ments of the deſigns of a ſmall number " of perſons; and that the power of the Peo- " ple is never any thing but the power of a " few Leaders, who (though it may be impoſ- " ſible to tell when, or how) have found means " to ſecure to themſelves the direction of its " exerciſe.

" Let us, therefore, be alſo beforehand with " this other inconvenience. Let us effect " openly what would, otherwiſe, take place " in ſecret. Let us intruſt our power, before " it be taken from us by addreſs. Thoſe whom

" we ſhall have expreſsly made the depoſitaries
" of it, being freed from any anxious care
" about ſupporting themſelves, will have no
" object but to render it uſeful. They will
" ſtand in awe of us the more, becauſe they
" will know that they have not impoſed upon
" us; and inſtead of a ſmall number of Leaders,
" who would imagine they derive their whole
" importance from their own dexterity, we
" ſhall have expreſs and acknowledged Re-
" preſentatives, who will be accountable to us
" for the evils of the State.

" But above all, by forming our Govern-
" ment of a ſmall number of perſons, we ſhall
" prevent any diſorder that may take place in
" it, from ever becoming dangerouſly exten-
" ſive. Nay more, we ſhall render it capable
" of ineſtimable combinations and reſources,
" which would be utterly impoſſible in that
" Government of all, which never can be any
" thing but uproar and confuſion.

" In ſhort, by expreſsly diveſting ourſelves
" of a power of which we ſhould, at beſt,
" have only an apparent enjoyment, we ſhall
" be intitled to make conditions for ourſelves:
" we will inſiſt that our liberty be augmented;
" we will, above all, reſerve to ourſelves the
" right of watching and cenſuring that admi-
" ſtration which will have been eſtabliſhed

" only by our own conſent. We ſhall the bet-
" ter ſee its defects, becauſe we ſhall be only
" Spectators of it; we ſhall correct them the
" better, becauſe we ſhall be independent of
" it (*a*)."

The Engliſh Conſtitution being founded upon ſuch principles as thoſe we have juſt deſcribed, no true compariſon can be made between it, and the Governments of any other States; and ſince it evidently inſures, not only the liberty, but the general ſatisfaction in all reſpects of thoſe who are ſubject to it, in a much greater degree than any other Government ever did, this conſideration alone affords ſufficient ground to conclude, without looking farther, that it is alſo much more likely to be preſerved from ruin.

And indeed we may obſerve the remarkable manner in which it has been maintained in the

(*a*) He might have added,—" As we will not ſeek
" to counter-act nature, but rather to follow it, we ſhall
" be able to procure ourſelves a mild Legiſlation.
" Let us not be without cauſe afraid of the power of
" one Man: we ſhall have no need either of a Tarpeian
" rock, or of a Council of *Ten*. Having expreſly
" allowed to the People a liberty to enquire into the
" conduct of Government, and to endeavour to cor-
" rect it, we ſhall need neither State-priſons, nor ſecret
" Informers."

midſt of ſuch general commotions as ſeemed unavoidably to prepare its deſtruction. It roſe again, we ſee, after the wars between Henry the Third and his Barons; after the uſurpation of Henry the Fourth; and after the long and bloody contentions between the Houſes of York and Lancaſter. Nay, though totally deſtroyed in appearance after the fall of Charles the Firſt, and though the greateſt efforts had been made to eſtabliſh another form of government in its ſtead, yet, no ſooner was Charles the Second called over, than the Conſtitution was re-eſtabliſhed upon all its ancient foundations.

However, as what has not happened at one time, may happen at another, future Revolutions (events which no form of Government can totally prevent) may perhaps end in a different manner from that in which paſt ones have been terminated. New combinations may poſſibly take place among the then ruling Powers of the State, of ſuch a nature as to prevent the Conſtitution, when peace ſhall be reſtored to the Nation, from ſettling again upon its ancient and genuine foundations; and it would certainly be a very bold aſſertion to decide, that both the outward form, and the true ſpirit of the Engliſh Government, would again be preſerved from

deſtruction, if the ſame dangers to which they have in former times been expoſed, ſhould again happen to take place.

Nay, ſuch fatal changes as thoſe we mention, may be introduced even in quiet times, or at leaſt, by means in appearance peaceable and conſtitutional. Advantages, for inſtance, may be taken by particular factions, either of the feeble temper, or of the miſconduct, of ſome future King. Temporary prepoſſeſſions of the People may be made uſe of, to make them concur in doing what will prove afterwards the ruin of their own liberty. Plans of apparent improvement in the Conſtitution, forwarded by Men who ſhall proceed without a due knowledge of the true principles and foundations of Government, may produce effects quite contrary to thoſe which were intended, and in reality prepare its ruin *(a)*. The

(*a*) Inſtead of looking for the principles of Politics in their true ſources, that is to ſay, in the nature of the affections of Mankind, and of thoſe ſecret ties by which they are united together in a ſtate of Society, Men have treated that ſcience in the ſame manner as they did natural Philoſophy in the times of Ariſtotle, continually recurring to occult cauſes and principles, from which no uſeful conſequence could be drawn. Thus, in order to ground particular aſſertions, they have much uſed the word Conſtitution, in a perſonal ſenſe, *the Conſtitution loves, the Conſtitution forbids,*

Crown, on the other hand, may, by the acquiſition of foreign dominions, acquire a fatal independency on the People: and if, without entering into any farther particulars on this ſubject, I were required to point out the principal events which would, if they were ever to happen, prove immediately the ruin of the Engliſh Government, I would anſwer the Engliſh Government will be no more, either when the Crown ſhall become independent on the Nation for its ſupplies, or when the Repreſentatives of the People ſhall begin to ſhare in the Executive authority *(a)*.

and the like. At other times, they have had recourſe to *Luxury*, in order to explain certain events; and at others, to a ſtill more occult cauſe, which they have called *Corruption*: and abundance of compariſons, drawn from the human Body, have been alſo uſed for the ſame purpoſes. Nor is it only the obſcurity of the writings of Politicians, and the impoſſibility of applying their ſpeculative Doctrines to practical uſes, that proves that ſome peculiar and uncommon difficulties attend the inveſtigation of political truths; but the ſingular perplexity which Men in general, even the ableſt, labour under when they attempt to diſcuſs abſtract queſtions in politics, alſo juſtifies this obſervation, and proves that the true firſt principles of this Science, whatever they are, lie deep in both the human heart and underſtanding.

(a) And if at any time, any dangerous changes were to take place in the Engliſh Conſtitution, the perni-

CHAP. XIX.

A few thoughts on the attempts that may at particular times be made to abridge the power of the Crown, and on ſome of the dangers by which ſuch attempts may be attended.

THE power of the Crown is ſupported by deeper roots than the generality of people are aware of, as has been obſerved in a former Chapter; and there is little fear that the taking away any capital branch of its prerogative, may be effected, in common peaceable times, by the mere theoretical ſpeculations of Politicians. However, it is not equally impracticable, that ſome event of the kind we mention, may be brought about by advantage being taken, in the firſt place, of the minority, or even the inexperience of the perſon inveſted with the kingly authority. Of this, a remarkable inſtance happened under the reign of King George the Firſt, while that bill, by which the number of Peers was in future to be

cious tendency of which the People were not able at firſt to diſcover, reſtrictions on e Liberty of the Preſs, and on the Power of Juries, will give them the firſt information.

limited to a certain number, was in agitation in the Houſe of Commons, to whom it had been ſent from that of the Lords, where it had been paſſed *(a)*. So unacquainted was the King at that time with his own intereſt, and with the Conſtitution of that Government over which he was come to preſide, that having been perſuaded by that party who wiſhed for ſucceſs to the Bill, that the objection made againſt it by the Houſe of Commons, was only owing to an opinion they entertained of the Bill being diſagreeable to him, that he was prevailed upon to ſend a meſſage to them, to let them know that ſuch an opinion was ill-grounded, and that ſhould the Bill paſs in their Houſe, it would meet with his aſſent *(b)*. Conſidering the prodigious importance of the conſequences of ſuch a Bill, the fact is certainly very remarkable.

With thoſe perſonal diſadvantages under which the Sovereign may lie for defending his authority, other important circumſtances may concur—ſuch as popular diſcontents of long

(*a*) Mention is made of this Bill in page 398 of this Work.

(*b*) See the Collection of *Parliamentary Debates*, &c. I do not remember exactly what Volume.

continuance in regard to certain particular abuſes of influence or authority. The generality of the Public bent, at that time, both upon remedying the abuſes that are complained of, and preventing the like from taking place in future, will perhaps wiſh to ſee that branch of the prerogative which gave riſe to them, taken from the Crown: a general diſpoſition to applaud ſuch a meaſure, if effected, will be manifeſted on all quarters; and at the ſame time people may not be aware that the only material conſequence of depriving the Crown of that branch of power which cauſed their complaints, will perhaps be the having tranſpoſed that branch of power from its former ſeat to another, and having truſted it to new hands, which will be ſtill more likely to abuſe it, than thoſe in which it was formerly lodged.

In general, it may be laid down as a maxim, that Power, under any form of Government, muſt exiſt and be truſted ſomewhere. If the Conſtitution does not admit of a King, the governing authority is lodged in the hands of Magiſtrates. If the Government, at the ſame time it is a limited one, bears a Monarchical form, thoſe ſhares of power that are retrenched from the King's prerogative, moſt

likely continue to ſubſiſt, and are veſted in a Senate or Aſſembly of great men, under ſome other name of the like kind.

Thus in the Kingdom of Sweden, which, having been a limited Monarchy, may ſupply examples very applicable to the Government of this Country, we find that the power of convoking the General States (or Parliament) of that kingdom, had been taken from the Crown; but we at the ſame time find, that the Swediſh Senators had inveſted themſelves with that eſſential branch of power which the Crown had loſt.—I mean here to ſpeak of the Government of Sweden, as it ſtood before the laſt revolution.

The power of the Swediſh King, to confer offices and employments, had been alſo very much abridged. But what was wanting to the power of the King, the Senate enjoyed: it had the nomination of three perſons for every vacant office, out of whom the King was to elect one.

The King of Sweden had but a limited power, in regard to pardoning offenders; but the Senate likewiſe poſſeſſed what was wanting to that branch of his prerogative; and it appointed two perſons, without the conſent of whom the King could not remit the puniſhment of any offence.

The King of England has an exclusive power in regard to foreign affairs, war, peace, treaties;—in all that relates to military affairs, he has the disposal of; the existing army, of the fleet, &c. The King of Sweden had no such extensive powers; but they nevertheless existed: every thing relating to the above-mentioned objects was transacted in the Assembly of the Senate; the majority decided; the King was obliged to submit to it; and his only privilege consisted in his vote being accounted two (*a*),

(*a*) The Swedish Senate was in later times composed of sixteen Members. In regard to affairs of smaller moment, they formed themselves into two divisions: in either of these, when they did sit, the presence of seven Members was required for the effectual transacting of business: in affairs of importance, the assembly was formed of the whole senate; and the presence of ten Members was required to give force to the resolutions. When the King could not, or would not, take his seat, the Senate proceeded nevertheless, and the majority continued to be equally decisive.

As the Royal Seal was necessary for putting in execution the resolutions of the Senate, King Adolphus Frederic, father to the present King, tried by refusing to lend the same, to procure that power which he had not by his suffrage, and to stop the proceedings of the Senate. Great debates, in consequence of that pretension, arose, and continued for a while; but, at last, in the year 1756, the King was over-ruled by the Senate, which ordered a seal to be made, that was named the King's Seal, which they affixed to their official resolutions, when the King refused to lend his own.

If we purſue farther our enquiry on the ſubject, we ſhall find that the King of Sweden could not raiſe whom he pleaſed to the office of Senator, as the King of England can, in regard to the office of Member of the Privy Council; but the Swediſh States, in the Aſſembly of whom the Nobility enjoyed moſt capital advantages, poſſeſſed a ſhare of the power we mention, in conjunction with the King; and in caſes of vacancies in the Senate, they elected three perſons, out of whom the King was to return one.

The King of England may, at all times, deprive his Miniſters of their employments. The King of Sweden could remove no Man from his office; but the States enjoyed the power that had been denied to the King; and they might deprive of their places both the Senators, and thoſe perſons in general who had a ſhare in the Adminiſtration.

The King of England has the power of diſſolving, or keeping aſſembled as long as he pleaſes, his Parliament. The King of Sweden had not that power; but the States might, of themſelves, prolong their duration as they thought proper.

Thoſe Perſons who think that the prerogative of a King cannot be too much abridged,

and that Power loſes all its influence on the diſpoſitions and views of thoſe who poſſeſs it, according to the kind of name uſed to expreſs thoſe offices by which it is conferred, may be ſatisfied, no doubt, to behold thoſe branches of power that were taken from a King, diſtributed to ſeveral bodies, and ſhared in by the Repreſentatives of the People. But thoſe who think that Power, when parcelled and diffuſed, is never ſo well repreſſed and regulated, as when it is confined to a ſole indiviſible ſeat, that keeps the Nation united and awake,—who know, that names by no means alter the intrinſic nature of things, the Repreſentatives of the People, as ſoon as they are veſted with independent authority, become *ipſo facto* its Maſters: thoſe perſons, I ſay, will not think it a very wiſe regulation in the former Conſtitution of Sweden, to have deprived the King of prerogatives formerly attached to his office, in order to veſt the ſame either in a Senate, or in the Deputies of the People, and thus to have truſted with a ſhare in the exerciſe of the public power, thoſe very Men whoſe conſtitutional office was to watch and reſtrain it.

It is to the indiviſibility of the governing authority in England, that the community of intereſt which takes place among all orders of

Men, and conſequently the ſuperior liberty the People enjoy, are owing. This obſervation has been inſiſted upon at length in the courſe of this Work. The ſhorteſt reflection on the frame of the human heart, ſuffices to convince us of its truth, and at the ſame time to manifeſt the danger that would reſult from making any changes in the form of the exiſting Government, by which this general community of intereſt might be leſſened, unleſs we are at the ſame time alſo inclined to believe, that partial Nature forms Men in this Iſland of quite other ſtuff than the ſelfiſh and ambitious one of which ſhe ever made them in other Countries (*a*).

(*a*) Such regulations as may capitally affect, through their conſequences, the equipoiſe of a Government, may be brought about, even though the promoters themſelves of thoſe regulations, are not aware of their tendency. At the time the Bill was paſſed in the laſt century, by which it was enacted that the Crown ſhould give up its prerogative of diſſolving the Parliament then ſitting, the generality of people had no thought of the calamitous conſequences that were to follow: very far from it. The King himſelf certainly felt no great apprehenſion on that account: and the Commons themſelves, it is evident, had but very faint notions of the capital changes which the Bill would ſpeedily effect in their political ſituation.

But paſt experience does not by any means allow us to entertain ſo pleaſing an opinion.

When the Crown of Sweden was, in the firſt inſtance, ſtripped of all the different prerogatives we have mentioned, it does not appear that thoſe meaſures were effected by ſudden, open proviſions for that purpoſe: it is very probable they had been prepared by indirect regulations formerly made, the whole tendency of which ſcarcely any body perhaps could foreſee at the time they were framed.

When the Bill was in agitation, by which the Houſe of Peers was in future to be limited to a certain number that was not to be exceeded, the great conſtitutional conſequences of the Bill were ſcarcely attended to by any body, The King himſelf certainly ſaw no harm in it, ſince, as hath been above mentioned, he ſent a meſſage to promote the paſſing of it: a meaſure which I cannot ſay how far it was in itſelf regular. The bill was, it appears, generally approved out of doors. Its fate was for a long time doubtful in the Houſe of Commons; nor did they acquire any glory by finally rejecting it. And Judge Blackſtone, as I find in his Commentaries, does not ſeem to have thought much of the Bill and its being rejected, as he only obſerves, that the Commons "wiſhed to keep the door of the "Houſe of Lords as open as poſſible:" yet, no Bill of greater conſtitutional importance was ever agitated in Parliament; ſince the conſequences of its being paſſed, would almoſt ſurely have been the conferring on the Houſe of Lords the right of electing their own Members: though it would be uſeleſs to point out here by what ſeries of intermediate ſteps the meaſure would have been brought about. Whether there

The peruſal of the Hiſtory of this Country will ſhew us that the care of its Legiſlators for the welfare of the ſubject, always kept pace with the exigencies of their own ſituation. When, through the minority or weak temper of the reigning Prince, or other circumſtances, the dread of a common Maſter ceaſed to operate, the public cauſe was immediately deſerted in a greater or leſs degree, and purſuit after private influence and lucrative offices took the place of patriotiſm. When, under the reign of Charles the Firſt, the authority of the Crown was for a while utterly annihilated, thoſe very Men, who, till then, had talked of nothing but Magna Charta and Liberty, inſtantly endeavoured openly to trample both under foot.

Since the time we mention, the former Conſtitution of the Government having been reſtored, the great outlines of public liberty have indeed been warmly and ſeriouſly defended:

exiſted any actual project of the kind, among the firſt framers of the Bill, does not appear: but a certain number of Members of the Houſe we mention, would have thought of it ſoon enough, if the Bill in queſtion had been enacted into a law; and they would certainly have met with ſucceſs, had they but been contented to wait, and had they taken time. Other equally important changes in the form of the Government, would have followed.

but if any partial unjuſt laws or regulations have been made, eſpecially ſince the Revolution of the year 1689; if any abuſes injurious to particular claſſes of individuals have been ſuffered to continue (facts into the truth of which I do not propoſe to examine here), it will certainly be found upon enquiry, that thoſe laws and thoſe abuſes were ſuch as that from them the Members of the Legiſlature well knew that neither they, nor their friends, would ever be likely to ſuffer.

If through the unforeſeen operation of ſome new regulation made to reſtrain the royal prerogative, or through ſome ſudden public revolution, any particular bodies or claſſes of individuals were ever to acquire a perſonal independent ſhare in the exerciſe of the governing authority, we ſhould behold the public virtue and patriotiſm of the Legiſlators and Great Men immediately ceaſe with its cauſe, and Ariſtocracy, as it were watchful of the opportunity, burſt out at once, and ſpread itſelf over the Kingdom.

The Men who are now the Miniſters, then the Partners of the Crown, would inſtantly ſet themſelves above the reach of the law, and ſoon after inſure the ſame privilege to their ſeveral ſupporters or dependants.

Power being become the only kind of ſecurity of which Men would now ſhew themſelves ambitious, the *Habeas Corpus* Act, and in general all thoſe laws which ſubjects of every rank mention with love, and to which they look up for protection and ſafety, would be ſpoken of with contempt, and mentioned as remedies only fit for Countrymen and Cits: it even would not be long before they were ſet aſide, as obſtructing the wiſe and ſalutary ſteps of the Senate.

The pretenſion of an equality of right in all Subjects, of whatever rank and order, to their property and to perſonal ſafety, would ſoon be looked upon as an old faſhioned doctrine, which the Judge himſelf would ridicule from the Bench. And the liberty of the preſs, now ſo univerſally and warmly vindicated, would, without loſs of time, be cried down and ſuppreſſed, as only ſerving to keep up the inſolence and pride of a refractory people.

And let us not believe, that the miſtaken People, whoſe Repreſentatives we now behold making ſuch a firm ſtand againſt the *indiviſible* power of the Crown, would, amidſt the general devaſtation of every thing they hold dear, eaſily find Men equally diſpoſed to repreſs the encroaching, while *attainable*, power of a Se-

nate and Body of Nobles.

The time would be no more when the People, upon whatever Men they let their choice fall, are ſure to find them ready ſincerely to join in the ſupport of every important branch of public liberty.

Preſent, or expected, perſonal power and independence on the laws, being now the conſequence of the truſt of the People, wherever they ſhould apply for ſervants, they would only meet with betrayers. Corrupting, as it were, every thing they ſhould touch, they could confer no favour upon any individual but to deſtroy his public virtue; and, to repeat the words uſed in a former Chapter, "their raiſing a Man would only be immediately inſpiring him with views directly "oppoſite to their own, and ſending him to "increaſe the number of their enemies."

All theſe conſiderations ſtrongly point out the very great caution which is neceſſary to be uſed in the difficult buſineſs of laying new reſtraints on the governing authority. Let therefore the leſs informed part of the People, whoſe zeal requires to be kept up by viſible objects, look, if they chooſe, upon the Crown as the only ſeat of the evils they are expoſed to (miſtaken notions on their part are leſs dangerous than political indifference, and they

are more eaſily directed than rouſed); but at the ſame time, let the more enlightened part of the Nation conſtantly remember, that the Conſtitution only ſubſiſts by virtue of a proper equilibrium,—by a line being drawn between Power and Liberty.

Made wiſe by the examples of ſeveral other Nations, by thoſe which the Hiſtory of this very Country affords, let the People, in the heat of their ſtruggles in the defence of liberty, always take heed, only to reach, never to overſhoot, the mark,—only to repreſs, never to transfer and diffuſe Power.

Amidſt the alarms that may, at particular times, ariſe from the really awful authority of the Crown, let it, on the one hand, be remembered, that even the power of the Tudors was oppoſed and ſubdued; and on the other hand, let it be looked upon as a fundamental maxim, that, whenever the proſpect of perſonal power and independence on the governing authority, ſhall offer to the view of the Members of the Legiſlature, or in general of thoſe Men to whom the People muſt truſt, even Hope itſelf is deſtroyed. The Hollander, in the midſt of a ſtorm, though truſting to the experienced ſtrength of the mounds that protect him, ſhudders no doubt at the ſight of the foaming Element that ſur-

rounds him; but they all gave themſelves up for loſt, when they thought the worm had got into their dykes *(a)*.

CHAP. XX.

A few additional Thoughts on the right of Taxation which is lodged in the hands of the Repreſentatives of the People. What kind of danger this Right may be expoſed to.

THE generality of Men, or at leaſt of Politicians, ſeem to conſider the right of taxing themſelves, enjoyed by the Engliſh Nation, as being no more than a means of ſecuring their property againſt the attempts of the Crown; while they overlook the nobler and more extenſive efficiency of that privilege.

The right to grant ſubſidies to the Crown, poſſeſſed by the People of England, is the ſafe-guard of all their other liberties, religious and civil: it is a regular means conferred on them by the Conſtitution, of influencing the motions of the Executive power; and it forms

(a) Such new forms as may prove deſtructive of the real ſubſtance of a Government, may be unwarily adopted, in the ſame manner as the ſuperſtitious notions and practices deſcribed in my Commentary on the Hiſtory of the Flagellants, may be introduced into a Religion, ſo as to entirely ſubvert the true ſpirit of it.

the tie by which the latter is bound to them. In ſhort, this privilege is a ſure pledge in their hands, that their Sovereign, who can diſmiſs their Repreſentatives at his pleaſure, will never entertain thoughts of ruling without the aſſiſtance of theſe.

If through unforeſeen events the Crown could attain to be independent on the People in regard to its ſupplies, ſuch is the extent of its Prerogative, that, from that moment, all the means the People poſſeſs to vindicate their liberty, would be annihilated. They would have no reſource left,—except indeed that uncertain and calamitous one, of an appeal to the ſword; which is no more, after all, than what the moſt enſlaved Nations enjoy.

Let us ſuppoſe, for inſtance, that abuſes of power ſhould be committed, which, either by their immediate operation, or by the precedents they might eſtabliſh, ſhould undermine the liberty of the ſubject. The People, it will be ſaid, would then have their remedy in the Legiſlative power poſſeſſed by their Repreſentatives. The latter would, at the firſt opportunity, interfere, and frame ſuch Bills as would prevent the like abuſes for the future. But here we muſt obſerve, that the Aſſent of the Sovereign is neceſſary to make thoſe Bills become Laws; and if, as we have juſt now ſuppoſed,

he had no need of the ſupport of the Commons, how could they obtain his aſſent to laws thus purpoſely framed to abridge his authority?

Again, let us ſuppoſe, that, inſtead of contenting itſelf with making ſlow advances to deſpotiſm, the Executive power ſhould at once openly invade the liberty of the ſubject. Obnoxious men, Printers for inſtance, or political Writers, are deſtroyed, either by military violence, or, to do things with more ſecurity, with the forms of law. Then, it will be ſaid, the Repreſentatives of the People would impeach the perſons concerned in thoſe meaſures. Though unable to reach a King who perſonally *can do no wrong*, they at leaſt would lay hold of thoſe Men who were the immediate inſtruments of his tyrannical proceedings, and endeavour, by bringing them to condign puniſhment, to deter future Judges or Miniſters from imitating them. All this I grant; and I will even add, that, circumſtanced as the Repreſentatives of the People now are, and having to do with a Sovereign who can enjoy no dignity without their aſſiſtance, it is moſt likely that their endeavours in the purſuits of ſuch laudable objects would prove ſucceſsful. But if, on the contrary, the King, as we have ſuppoſed, ſtood in no

need of their aſſiſtance, and moreover knew that he ſhould never want it, it is impoſſible to think that he would then ſuffer himſelf to remain a tame ſpectator of their proceedings. The impeachments thus brought by them would immediately prove the ſignal of their diſmiſſion; and the King would make haſte, by diſſolving them, both to revenge what would then be called the inſolence of the Commons, and to ſecure his Miniſters.

But even thoſe are vain ſuppoſitions: the evil would reach much farther; and we may be aſſured that if ever the Crown was to be in a condition to govern without the aſſiſtance of the Repreſentatives of the People, it would diſmiſs them for ever, and thus rid itſelf of an Aſſembly, which, while it continued to be a clog on its power, could no longer be of any ſervice to it. This is what Charles the Firſt attempted to do, when he found his Parliaments grew refractory, and what the Kings of France really have done, with reſpect to the General Eſtates of their Kingdom.

And indeed if we conſider the extent of the Prerogative of the King of England, and eſpecially the circumſtance of his completely uniting in himſelf all the executive and active powers in the State, we ſhall find that it is no

exaggeration to ſay, that he has power ſufficient to be as arbitrary as the Kings of France, were it not for the right of taxation, which, in England, is poſſeſſed by the People; and the only conſtitutional difference between the French and Engliſh Nations, is, that the former can neither confer benefits on their Sovereign, nor hinder his meaſures; while the latter, how extenſive ſoever the Prerogative of their King may be, can deny him the means of exerting it.

But here a moſt important obſervation is to be made; and I entreat the reader's attention to the ſubject. This right of granting ſubſidies to the Crown, can only be effectual when it is exerciſed by one Aſſembly alone. When ſeveral diſtinct Aſſemblies have it equally in their power to ſupply the wants of the Prince, the caſe becomes totally altered. The competition which ſo eaſily takes place between thoſe different Bodies, and even the bare conſciouſneſs which each entertains of its inability to hinder the meaſures of the Sovereign, render it impoſſible for them to make any effectual conſtitutional uſe of their privilege. "Thoſe dif-
"ferent Parliaments or Eſtates (to repeat the
"obſervation introduced in the former part
"of this Work) having no means of recom-

"mending themſelves to their Sovereign, but "their ſuperior readineſs in complying with "his demands, vie with each other in grant-"ing what it would not only be fruitleſs, but "even dangerous to refuſe. And the King, "on the other hand, ſoon comes to demand "as a tribute, a gift which he is confident to "obtain." In ſhort, it may be laid down as a maxim, that when a Sovereign is made to depend, in regard to his ſupplies, on more Aſſemblies than one, he, in fact, depends upon none. And indeed the King of France is not independent on his People for his neceſſary ſupplies, any otherwiſe than by drawing the ſame from ſeveral different Aſſemblies of their Repreſentatives; the latter have in appearance a right to refuſe all his demands; and as the Engliſh call the grants they make to their Kings, Aids or Subſidies, ſo do the Eſtates of the French provinces call their's, *Dons gratuits*, or free gifts.

What is it, therefore, that conſtitutes the difference between the political ſituation of the French and Engliſh Nations, ſince their rights thus ſeem to be the ſame? The difference lies in this, that there has never been in England more than one Aſſembly that could ſupply the wants of the Sovereign. This has always kept him in a ſtate, not of a ſeeming, but of

a real dependence on the Repreſentatives of the People for his neceſſary ſupplies; and how low ſoever the liberty of the Subject may, at particular times, have ſunk, they have always found themſelves poſſeſſed of a moſt effectual means of reſtoring it, whenever they have thought proper ſo to do. Under Henry the Eighth, for inſtance, we find the Deſpotiſm of the Crown to have been carried to an aſtoniſhing height; it was even enacted that the Proclamations of the King ſhould have the force of law; a thing which even in France, never was ſo expreſly declared: yet no ſooner did the Nation recover from its long ſtate of ſupineneſs, than the exorbitant power of the Crown was reduced within its conſtitutional bounds.

To no other cauſe than the diſadvantage of their ſituation, are we to aſcribe the low condition in which the Deputies of the People in the Aſſembly called the General Eſtates of France, were always forced to remain.

Surrounded as they were by the particular Eſtates of thoſe Provinces into which the Kingdom had been formerly divided, they never were able to ſtipulate conditions with their Sovereign; and inſtead of making their right of granting ſubſidies to the Crown ſerve to gain them in the end a ſhare in Legiſlation, they ever remained confined to the naked pri-

vilege of "humble Supplication and Remon-"ſtrance."

Thoſe Eſtates, however, as all the great Lords in France were admitted into them, began at length to appear dangerous; and as the King could in the mean time do without their aſſiſtance, they were ſet aſide. But ſeveral of the particular Eſtates of the Provinces are preſerved to this day: ſome, which for temporary reaſons had been aboliſhed, have been reſtored; nay, ſo manageable have popular Aſſemblies been found by the Crown, when it has to do with many, that the kind of Government we mention is that which it has been found moſt convenient to aſſign to Corſica; and Corſica has been made *un pays d' Etats* (*a*).

(*a*) An idea of the manner in which the buſineſs of granting ſupplies to the Crown, was conducted by the States of the province of Britanny, under the reign of Lewis the Fourteenth, may be formed from ſeveral lively ſtrokes to be met with in the Letters of Mad. de Sévigné, whoſe Eſtate lay in that Province, and who had often aſſiſted at the holding of thoſe States. The granting of ſupplies was not, it ſeems, looked upon as any ſerious kind of buſineſs. The whole time the States were ſitting, was a continued ſcene of feſtivity and entertainment: the canvaſſing of the demands of the Crown was chiefly carried on at the table of the Nobleman who had been deputed from Court to hold the States; and every thing was commonly decided

That the Crown in England ſhould, on a ſudden, render itſelf independent on the Commons for its ſupplies, that is, ſhould on a ſudden ſucceſsfully aſſume to itſelf a right to lay taxes on the Subject, by its own authority, is not certainly an event in any degree likely to take place, nor indeed that ſhould raiſe any kind of political fear. But it is not equally impracticable, that the right of the Repre-

by a kind of acclamation. In a certain Aſſembly of thoſe States, the Duke of Chaulnes, the Lord Deputy, had a preſent of fifty thouſand crowns made to him, as well as a conſiderable one for his Ducheſs, beſides obtaining the demand of the Court; and the lady we quote here, commenting ſomewhat jocularly on thoſe grants, ſays, *Ce n'eſt pas que nous ſoyons riches; mais nous ſommes honnêtes, nous avons du courage, & entre midi & une heure, nous ne ſavons rien refuſer à nos amis* "It is "not that we are rich; but we are civil, we are full of "courage, and, between twelve and one o'clock, we "are unable to deny any thing to our friends."

The different Provinces of France, it may be obſerved, are liable to pay ſeveral taxes beſides thoſe impoſed on them by their own States. Dean Tucker, in one of his Tracts, in which he has thought proper to quote this Work, has added to the above inſtance of the French Provinces, that of the States of the Auſtrian Netherlands, which is very concluſive. And examples to the ſame purpoſe might be ſupplied by all thoſe Kingdoms of Europe in which Provincial States are held.

ſentatives of the People might become invalidated, by being divided in the manner that has juſt been deſcribed.

Such a diviſion of the right of the People might be effected ſeveral different ways. National calamities for inſtance, unfortunate foreign wars, attended with loſs of public credit, might ſuggeſt methods for raiſing the neceſſary ſupplies, different from thoſe which have hitherto been uſed. Dividing the Kingdom into a certain number of parts, which ſhould ſeverally vote ſubſidies to the Crown, or even diſtinct aſſeſſments made by the different Counties into which England is now divided, might, in the circumſtances we ſuppoſe, be looked upon as adviſeable expedients; and theſe, being once introduced, might be continued afterwards.

Another diviſion of the right of the People, much more likely to take place than thoſe juſt mentioned, might be ſuch as might ariſe from acquiſitions of foreign dominions, the inhabitants of which ſhould in time claim and obtain a right to treat directly with the Crown, and grant ſupplies to it, without the interference of the Britiſh Legiſlature.

Should any Colonies acquire the right we mention—ſhould, for inſtance, the American Colonies have acquired it, as they claimed it,

it is not to be doubted that the conſequences that have reſulted from a diviſion like that we mention in moſt of the Kingdoms of Europe, would alſo have taken place in the Britiſh dominions, and that that ſpirit of competition which has been above deſcribed, would in time have manifeſted itſelf between the different Colonies. This deſire of ingratiating themſelves with the Crown, by means of the privilege of granting ſupplies to it, has even been openly confeſſed by an Agent of the American Colonies (*a*), when, on his being examined by the Houſe of Commons, in the year 1766, he ſaid, "*the granting Aids to the Crown, is the* "*only means the Americans have of recommending* "*themſelves to their Sovereign.*" And the events that have of late years taken place in America, render it evident that the Colonies would not have ſcrupled going any lengths to obtain favourable conditions at the expence of Britain and the Britiſh Legiſlature.

That a ſimilar ſpirit of competition might be raiſed in Ireland, is alſo ſufficiently plain from certain late events. And ſhould the American Colonies have obtained their demands, and at the ſame time ſhould Ireland and America have increaſed in wealth to a cer-

(*a*) Doctor Franklin.

tain degree, the time might have come, at which the Crown might have governed England with the ſupplies of Ireland and America—Ireland with the ſupplies of England and of the American Colonies—and the American Colonies with the money of each other, and of England and Ireland.

To this it may be objected, that the ſupplies granted by the Colonies, even though joined with thoſe of Ireland, never could have riſen to ſuch a height as to have counterbalanced the importance of the Engliſh Commons.—— I anſwer, in the firſt place, that there would have been no neceſſity that the aids granted by Ireland and America ſhould have riſen to an equality with thoſe granted by the Britiſh Parliament: it would have been ſufficient, to produce the effects we mention, that they had only borne a certain proportion with theſe latter, ſo far as to have conferred on the Crown a certain degree of independence, and at the ſame time to have raiſed in the Engliſh Commons a correſpondent ſenſe of ſelf-diffidence in the exerciſe of their undoubted privilege of granting, or rather *refuſing*, ſubſidies to the Crown.—Here it muſt be remembered, that the right of granting, or refuſing, ſupplies to the Crown, is the only real, conſtitu-

tutional privilege the Britiſh Parliament poſſeſs: they have no other, as hath been obſerved in the beginning of this Chapter: this circumſtance ought to be combined with the abſolute excluſiveneſs of the executive powers lodged in the Crown—with its prerogative of diſſenting from the Bills framed by Parliament, and even of diſſolving it (*a*).

(*a*) Being with Doctor Franklin at his houſe in Craven-ſtreet, ſome months before he went back to America, I mentioned to him a few of the remarks contained in this Chapter, and, in general, that the claim of the American Colonies directly claſhed with one of the vital principles of the Engliſh Conſtitution. The obſervation, I remember, ſtruck him very much: it led him afterwards to ſpeak to me of the examination he had undergone in the Houſe of Commons; and he lent me the volume of the Collection of *Parliamentary Debates*, in which an account of it is contained. Finding the conſtitutional tendency of the claim of the Americans to be a ſubject not very generally underſtood, I added a few paragraphs concerning it, in the Engliſh Edition I ſome time after gave of this Work; and being now about to give a third Edition of the ſame, I have thought it might not be amiſs to write ſomething more compact on the ſubject, and have accordingly added the preſent new Chapter, into which I have transferred the few additional paragraphs I mention, leaving in the place where they ſtood (pag. 45) only the general obſervations on the right of granting ſubſidies, which were formerly in the French Work [illegible] of the ideas. and even expreſſions contained in this Chapter, made

In the ſecond place, I ſhall mention a remarkable fact in regard to the ſubject we are treating (which may ſerve to ſhew that Politicians are not always conſiſtent, or even ſagacious, in their arguments), which is, that the ſame perſons who were the moſt ſtrenuous advocates for granting to the American Colonies their demands, were at the ſame time the moſt ſanguine in their predictions of the future wealth and greatneſs of America, and at the ſame time alſo, uſed to make frequent complaints on the undue influence which the Crown derives from the ſcanty ſupplies granted to it by the kingdom of Ireland (*a*).

Had the American Colonies fully obtained their demands, both the eſſence of the preſent Engliſh Government, and the condition of the Engliſh People, would certainly have been altered thereby: nor would ſuch a change

their appearance in the *Public Adverti ſer*, about the time I was preparing the firſt Edition: I ſent them myſelf to that Newſpaper, under the ſignature of *Advena*. I mention this for the ſake of thoſe perſons who may perchance remember having ſeen the ſketch I allude to.

(*a*) This is chiefly meant to allude to the complaints made in regard to the penſions on the Iriſh eſtabliſhment.

have been inconſiderable, but in proportion as the Colonies ſhould have remained in a ſtate of national poverty (*a*).

(*a*) When I obſerve that no Man who wiſhed for the preſervation of the form and ſpirit of the Engliſh Conſtitution, ought to have deſired that the claim of the American Colonies might be granted them, neither do I mean to ſay, that the American Colonies ſhould have given up their claim. The wiſdom of Miniſters, in regard to American affairs, ought to have been conſtantly employed in making the Colonies uſeful to this Country, and at the ſame time, in hiding their ſubjection from them (a caution which is, after all, more or leſs uſed in every Government upon earth); it ought to have been exerted in preventing the oppoſite intereſts of Britain and of America from being brought to an iſſue, to any ſuch claſhing dilemma as would render diſobedience on the one hand, and the reſort to force on the other, almoſt ſurely unavoidable. The generality of people fancy that Miniſters uſe a great depth of thought, and much forecaſt in their operations; whereas the truth is, that Miniſters in all Countries, never think but of providing for preſent, immediate contingencies; in doing which they conſtantly follow the open track before them. This method does very well for the common courſe of human affairs, and even is the ſafeſt; but whenever caſes and circumſtances of a new and unknown nature occur, ſad blunders and uproar are the conſequences. The celebrated Count Oxenſtiern, Chancellor of Sweden, one day when his Son was expreſſing to him his diffidence of his own abilities, and the dread with which he thought of ever engaging in the management of public affairs, made the following Latin anſwer to him; *Neſcis, mi fili, quam parvâ cum ſapientiâ regitur mundus* (You do not know, my ſon, with what little wiſdom the World is governed.)

CHAP. XXI.

Concluſion.—A few words on the nature of the Diviſions that take place in England.

I Shall conclude this Work with a few obſervations on the total freedom from violence with which the political diſputes and contentions in England are conducted and terminated, in order both to give a farther

Matters having come to an eruption, it was no longer to be expected they could be compromiſed, by the palliative offers ſent at different times from this Country to America. When the Earl of Carliſle ſolicited to be at the head of the ſolemn Commiſſion that ſailed for the purpoſe we mention, he did not certainly ſhew modeſty equal to that of the Son of Chancellor Oxenſtiern. His Lordſhip's enemies have ſaid, that the Americans could not think that the propoſals of which he was made the bearer, were ſeriouſly meant: however, this cannot have been the principal cauſe of the miſcarriage of his commiſſion. The fact is, that, after the Americans had been once made to open their eyes on their political ſituation, and rendered ſenſible of the local advantages of their Country, it was become in a manner impoſſible, to have ſtruck with them any bargain at which either Nation would have had afterwards cauſe to rejoice, or even to have ſtruck any bargain at all. It would be needleſs to ſay here any thing more on the ſubject of the American conteſt.

The motto of one of the Engliſh Nobility, ſhould have been that of Miniſters, in their regulations for rendering the Colonies uſeful to the Mother Country,—*Faire ſans dire.*

proof of the ſoundneſs of the principles on which the Engliſh Government is founded, and to confute in general the opinion of foreign Writers or Politicians, who, miſled by the apparent heat with which thoſe diſputes are ſometimes carried on, and the rumours to which they give occaſion, look upon England as a perpetual ſcene of civil broils and diſſenſions.

In fact, if we conſider, in the firſt place, the conſtant tenour of the conduct of the Parliament, we ſhall ſee that whatever different plans the ſeveral Orders that compoſe it, may at times purſue, and whatever uſe they may, in conſequence, make of their privileges, they never go, with regard to each other, beyond the terms, not only of decency, but even of that general good underſtanding which ought to prevail among them.

Thus the King, though he preſerves the ſtyle of his Dignity, never addreſſes the two Houſes but in terms of regard and affection; and if at any time he chuſes to refuſe their Bills, he only ſays that he will conſider of them *(le Roy s'adviſera)*; which is certainly a gentler expreſſion than the word *Veto*.

The two Houſes on their part, though very jealous, each within their own walls, of the

freedom of Speech, are, on the other hand, extremely careful that that liberty ſhall never break out into unguarded expreſſions with regard to the perſon of the King. It is even a conſtant rule amongſt them never to mention him, when they mean to blame the adminiſtration; and thoſe things which they may chuſe to cenſure, even in the Speeches made by the King in perſon, and which are plainly his own acts, are never conſidered but as the faults of his Miniſters, or in general of thoſe who have adviſed him.

The two Houſes are alſo equally attentive to prevent every ſtep that may be inconſiſtent with that reſpect which they mutually owe to one another. The examples of their differences with each other are very rare, and were for the moſt part mere miſunderſtandings. Nay, in order to prevent all ſubject of altercation, the cuſtom is, that when one of the two Houſes refuſes to conſent to a Bill preſented by the other, no formal declaration is made of ſuch refuſal; and the Houſe whoſe Bill is rejected, learns its fate only from their hearing no more of it, or by what the Members may be told as private perſons.

In each Houſe, the Members take care, even in the heat of debate, never to go beyond certain bounds in their manner of ſpeak-

ing of each other; and if they were to offend in that reſpect, they would certainly incur the cenſure of the Houſe. And as reaſon has taught Mankind to refrain, in their wars, from all injuries to each other that have no tendency to promote the main object of their contentions, ſo a kind of Law of Nations (if I may ſo expreſs myſelf) has been introduced among the perſons who form the Parliament, and take a part in the debates: they have diſcovered that they may very well be of oppoſite parties, and yet not hate and perſecute one another. Coming freſh from debates carried on even with conſiderable warmth, they meet without reluctance in the ordinary intercourſe of life; and, ſuſpending all hoſtilities, they hold every place out of Parliament to be neutral ground.

In regard to the generality of the People, as they never are called upon to come to a final deciſion with reſpect to any public meaſures, or expreſsly to concur in ſupporting them, they preſerve themſelves ſtill more free from party ſpirit than their Repreſentatives themſelves ſometimes are. Conſidering as we have obſerved, the affairs of Government as only matter of ſpeculation, they never have occaſion to engage in any vehement

conteſts among themſelves on that account. Much leſs do they allow themſelves to take an active and violent part in the differences of particular factions, or the quarrels of private individuals. And thoſe family feuds, thoſe party animoſities, thoſe victories and conſequent outrages of alternately ſucceſsful factions, in ſhort, all thoſe inconveniencies which in ſo many other States have conſtantly been the attendants of liberty, and which Authors tell us we muſt ſubmit to as the price of it, are things totally unknown in England.

But are not the Engliſh perpetually making complaints againſt the Adminiſtration? and do they not ſpeak and write as if they were continually expoſed to grievances of every kind?

Undoubtedly, I anſwer, in a Society of Beings ſubject to error, diſſatisfactions will neceſſarily ariſe from one quarter or other; and in a free Society, they will be openly manifeſted by complaints. Beſides, as every Man in England is permitted to give his opinion upon all ſubjects, and as, to watch over the Adminiſtration, and to complain of grievances, is the proper duty of the Repreſentatives of the People, complaints muſt neceſſarily be heard in ſuch a Government, and

even more frequently, and upon more ſubjects, than in any other.

But thoſe complaints, it ſhould be remembered, are not, in England, the cries of oppreſſion forced at laſt to break its ſilence. They do not ſuppoſe hearts deeply wounded. Nay, I will go farther, they do not even ſuppoſe very determinate ſentiments; and they are often nothing more than the firſt vent which Men give to their new, and yet unſettled conceptions.

The agitation of men's minds is not therefore in England what it would be in other States; it is not the ſymptom of a profound and general diſcontent, and the forerunner of violent commotions. Foreſeen, regulated, even hoped for by the Conſtitution, it animates all parts of the State, and is to be conſidered only as the beneficial viciſſitude of the ſeaſons. The Power which governs, being dependant on the Nation, but poſſeſſing at the ſame time the general affection of the People, is often thwarted, but never endangered. Like a vigorous Tree which ſtretches its branches far and wide, the ſlighteſt breath puts it in motion; but it acquires and exerts at every in-

ſtant a new degree of force, and reſiſts the Winds, both by the ſtrength and elaſticity of its fibres, and the depth of its roots.

In a word, whatever Revolutions may at times happen among the perſons who conduct the public affairs in England, they never occaſion the ſhorteſt ceſſation of the power of the Laws, nor the ſmalleſt diminution of the ſecurity of individuals. A Man who ſhould have incurred the enmity of the moſt powerful Men in the State—what do I ſay?—though he had, like another *Vatinius*, drawn upon himſelf the united deteſtation of all parties, he might, under the protection of the Laws, and by keeping within the bounds preſcribed by them, continue to ſet both his enemies and the whole Nation at defiance.

The limits preſcribed to this book do not allow us to enter into any farther particulars on the ſubject we are treating here; but if we were to make an enquiry into the influence which the Engliſh Government has on the manners and cuſtoms of the People of England, perhaps we ſhould find that, inſtead of inſpiring them with any diſpoſition to diſorder or anarchy, it produces on them a quite contrary effect. As they ſee the higheſt Powers in the State conſtantly ſubmit to the Laws, and

they receive, themſelves, ſuch a certain protection from thoſe laws, whenever they appeal to them, it is impoſſible but they muſt inſenſibly contract a deep-rooted attachment and reſpect for them, which can at no time ceaſe to have ſome influence on their actions. And in fact, we ſee that even the lower claſs of the People, in England, notwithſtanding the apparent exceſſes into which they are ſometimes hurried, poſſeſs a ſpirit of juſtice and order, ſuperior to what is to be obſerved in the ſame rank of Men in other Countries. The extraordinary indulgence which is ſhewn to accuſed perſons of every degree, is not attended with any of thoſe pernicious conſequences which we might at firſt be apt to fear from it. And it is perhaps to the nature of the Engliſh Government itſelf (however remote the cauſe may ſeem) and to the ſpirit of Juſtice it continually and inſenſibly diffuſes throughout all orders of the People, that we are to attribute the ſingular advantage poſſeſſed by the Engliſh Nation, of employing an incomparably milder mode of adminiſtering Juſtice in criminal matters, than any other Nation, and at the ſame time of affording perhaps fewer inſtances of violence or cruelty.

Another conſequence which we might obſerve here, as flowing alſo from the principles of the Engliſh Government, is the moderate behaviour of all thoſe who are inveſted with any branch of public authority. And if we look at the conduct of all public Officers in England, from the Miniſter of State, or the Judge, down to the loweſt officers of Juſtice, we find a ſpirit of forbearance and lenity prevailing in England, among all perſons in power, which cannot but create the greateſt ſurprize in thoſe who have viſited other Countries.

One circumſtance more I ſhall obſerve here, as peculiar to England, which is the conſtant attention of the Legiſlature in providing for the intereſts and welfare of the People, and the indulgences ſhewn by them to their very prejudices. Advantages theſe, which are no doubt the conſequence of the general ſpirit which animates the whole Engliſh Government, but are alſo particularly owing to that circumſtance peculiar to it, of having lodged the active part of Legiſlation in the hands of the Repreſentatives of the Nation, and committed the care of alleviating the grievances

of the People to perſons who either feel them, or ſee them nearly, and whoſe ſureſt path to advancement and glory is to be active in finding remedies for them.

Not that I mean, however, that no abuſes take place in the Engliſh Government, and that all poſſible good laws are made in it, but that there is a conſtant tendency in it both to correct the one, and improve the other. And that all the laws that are in being, are certainly executed, whenever appealed to, is what I look upon as the characteriſtic and undiſputed advantage of the Engliſh Conſtitution. A Conſtitution the more likely to produce all the effects we have mentioned, and to procure in general the happineſs of the People, in that it has taken Mankind as they are, and has not endeavoured to prevent every thing, but to regulate every thing: I ſhall add, the more difficult to diſcover, becauſe its form was complicated, while its principles were natural and ſimple. Hence it is that the Politicians of Antiquity, ſenſible of the inconveniences of the Governments they had opportnnities of knowing, wiſhed for the eſtabliſhment of ſuch a Government, without much hopes of ever

ſeeing it effected *(a)*: nay, Tacitus, the beſt Judge of them all, conſidered it as a project entirely chimerical (*b*). Nor was it becauſe he had not thought of it, had not reflected on it, that he was of this opinion: he had fought for ſuch a government, had had a glimpſe of it, and yet continued to pronounce it impracticable.

Let us not therefore aſcribe to the confined views of Man, to his imperfect ſagacity, the diſcovery of this important ſecret. The world might have grown old, generations might have ſucceeded generations, ſtill ſeeking it in vain. It has been by a fortunate conjunction of circumſtances, I will add, by the aſſiſtance of a favourable ſituation, that Liberty has at laſt been able to erect herſelf a Temple.

(*a*) "Statuo eſſe optimè conſtitutam Rempublicam "quæ ex tribus generibus illis, regali, optimo, & po- "pulari, modicè confuſa,"—Cic. *fragm.*

(*b*) "Cunctas Nationes & Urbes, Populus, aut "Priores, aut Singuli, regunt. Delecta ex his & con- "ſtituta Reipublicæ forma, laudari facilius, quàm eve- "nire; vel ſi evenit, haud diuturna eſſe poteſt."—Tac. Ann. lib. iv.

Invoked by every Nation, but of too delicate a nature, as it ſhould ſeem, to ſubſiſt in Societies formed of ſuch imperfect beings as Mankind, ſhe ſhewed, and but juſt ſhewed herſelf, to the ingenious Nations of antiquity that inhabited the ſouth of Europe. They were conſtantly miſtaken in the form of the worſhip they paid to her. As they continually aimed at extending dominion and conqueſt over other Nations, they were no leſs miſtaken in the ſpirit of that worſhip; and though they continued for ages to pay their devotions to her, ſhe ſtill continued, with regard to them, to be the *unknown* Goddeſs.

Excluded, ſince that time, from thoſe places to which ſhe had ſeemed to give a preference, driven to the extremity of the Weſtern World, baniſhed even out of the Continent, ſhe has taken refuge in the Atlantic Ocean. It is there, that, freed from the danger of external diſturbance, and aſſiſted by a happy pre-arrangement of things, ſhe has been able fully to diſplay the form that ſuited her; and ſhe has found ſix centuries to have been neceſſary to the completion of her Work.

Being ſheltered, as it were, within a Citadel, ſhe there reigns over a Nation which is the better entitled to her favours as it endeavours to extend her Empire, and carries with it, to every part of its dominions, the bleſſings of induſtry and equality. Fenced in on every ſide, to uſe the expreſſions of Chamberlayne, with a wide and deep ditch, the ſea, guarded with ſtrong outworks, its ſhips of war, and defended by the courage of its Seamen, it preſerves that important ſecret, that ſacred fire, which is ſo difficult to be kindled, and which, if it were once extinguiſhed, would perhaps never be lighted again. When the World ſhall have again been laid waſte by Conquerors, it will ſtill continue to ſhew Mankind, not only the principle that ought to unite them, but what is of no leſs importance, the form under which they ought to be united. And the Philoſopher, when he reflects on what is conſtantly the fate of civil Societies amongſt Men, and obſerves with concern the numerous and powerful cauſes which ſeem, as it were, unavoidably to conduct them all to a ſtate of incurable political Slavery, takes com-

fort in seeing that Liberty has at last disclosed her secret to Mankind, and secured an Asylum to herself.

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THE END.

FH

MVSEVM

BRITANNICVM

ERRATA.

Page 7, line 22, for *ſociorum*, read *ſeclorum*. P. 21, l. 8, *for* co-reſiſtance, *read* concerted reſiſtance. P. 25, l. 2, *for* loweſt, *read* lower P. 70, l. 12, note, *for* by that Court paſſed, *read* paſſed by that Court. P. 72, l. 14, *for* his name, *read* in his name. P. 177, l. 4, note, *for* land, *read* and. P. 246, l. 12, *for* by theſe, *read* by which theſe. P. 265, l. 8, *for* ſly, *read* fly. P. 269, l. ult. *dele* to. P. 304, l. 19, *for* ſenbility, *read* ſenſibility. P. 315, l. 2, *for* equire, *read* enquire. P. 347, l. 14, *for* do not find, *read* do not only find. P. 378, l. 3, *for* and that is, *read* that it is. P. 385, l. 3, note, *for* follows which, *read* follows that which. P. 395, l. penult. *for*, for tacking, *read* or tacking. P. 410, l. 2, *for* at the bottom as, *read* at bottom the ſame as. Ibid. l. 5, note, *for* LATERI, *read* ALTERI. P. 411, l. 10, note, for *Princepe*, read *Principe*. P. 419, l. 14, *for* mentioned, *read* mention. P. 441, l. 3, *put a ſemicolon at* affairs; *and* l. 4, *dele the* ; *at* diſpoſal of. P. 443, l. 13, *for* alter, *read* altering.